

Exhibit 2

In The Matter Of:

CHARLIE THORNTON
v.
FEDEX GROUND PACKAGE SYSTEM

CHARLIE THORNTON
March 15, 2006



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IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CIVIL ACTION NO: 2:05-CV-00656-DRB

CHARLIE THORNTON,
Plaintiff,

vs.

FEDEX GROUND PACKAGE SYSTEM, INC.,
Defendant.

DEPOSITION
OF
CHARLIE THORNTON
15TH DAY OF MARCH, 2006

TAKEN BEFORE: Gary N. Morgan
Registered Professional
Reporter and Notary Public

A P P E A R A N C E S

FOR THE PLAINTIFF:

Mr. K. Anderson Nelms
Attorney at Law
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Montgomery, Alabama 36104

FOR THE DEFENDANT:

Messrs. Robert K. Spotswood and
John. R. Parker, Jr.
Attorneys at Law
Law Offices of Robert K. Spotswood
Suite 940
2100 Third Avenue North
Birmingham, Alabama 35203

OTHERS PRESENT:

Mr. Kent Gastineau

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S T I P U L A T I O N

IT IS STIPULATED AND AGREED,
by and between the parties, through their
respective counsel, that the deposition
of CHARLIE THORNTON may be taken before
Gary N. Morgan, Commissioner, Registered
Professional Reporter and Notary Public,
State at Large;

That the signature to and
reading of the deposition by the witness
is waived, the deposition to have the
same force and effect as if full
compliance had been had with all laws and
rules of Court relating to the taking of
depositions;

That it shall not be necessary
for any objections to be made by counsel
to any questions, except as to form or
leading questions, and that counsel for
the parties may make objections and
assign grounds at the time of trial, or
at the time said deposition is offered in
evidence, or prior thereto.

I N D E X

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I, Gary N. Morgan, a
Registered Professional Reporter of
Birmingham, Alabama, and a Notary Public
for the State of Alabama at Large, acting
as Commissioner, certify that on this
date, as provided by the Federal Rules of
Civil Procedure of the United States
District Court, and the foregoing
stipulation of counsel, there came before
me at 847 South McDounough Street,
Montgomery, Alabama, on the 15th day of
March, 2006, commencing at 9:33 a.m.,
CHARLIE THORNTON, witness in the above
cause, for oral examination, whereupon
the following proceedings were had:

CHARLIE THORNTON,
being first duly sworn, was examined and
testified as follows:

EXAMINATION BY MR. SPOTSWOOD:

Q. Mr. Thornton, my name is Bob
Spotswood, and, together with J. R.

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Parker, I represent FedEx Ground in
connection with the lawsuit that you have
filed against it. We're here today for
the purpose of taking your deposition.
Have you ever had a deposition taken
before?

A. One other time.

Q. Okay. And, so, what's going
to happen here, and I'm sure this is
familiar with you since you've been
deposed before, is that I'm going to ask
questions, you're going to give me
answers. It makes the process a lot
easier if you'll take your time with me
and I'll take my time with you, and
specifically I mean let me finish my
question before you give an answer. It's
also very important for you to answer out
loud with words rather than with a nod of
the head or a huh-uh or a uh-huh because
that's all subject to interpretation, so
please speak up.

If at any time during the

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course of the day today you have any need
for a break, just let us know that, and
we'll do whatever you need to do or take
a break. If at any time you don't
understand any of my questions, it's okay
for you to say you don't understand the
question. I want you to understand what
I'm asking you is the point.

If, in the course of the
deposition, you think later after you've
answered a question that you've got an
additional answer you want to give, you
want to clarify something that you said,
it's okay to bring it up later. I'm
trying to get a full story, as you'll see
today, about why we're here and in this
litigation, so I want you to feel free
to, you know, if you've forgotten about
something, to come along later and
supplement what you said.

Are you on any medications of
any kind today?

A. The only thing I take is

2 (Pages 5 to 8)

Page 9

1 something for hypertension.
2 Q. And what would that be? I
3 take some of those myself.
4 A. It's Uretic I think is the
5 name of it.
6 Q. Okay.
7 A. It's a very -- it's a low
8 blood pressure tablet.
9 Q. Okay. And I'm sitting here
10 looking at you. You look perfectly lucid
11 to me. You're not under the influence of
12 any kind of drugs or alcohol or anything
13 like that that would keep you from
14 answering --
15 A. That's correct.
16 Q. -- properly and truthfully?
17 And tell us your full name, please, sir.
18 A. Charlie Edward Thornton, Sr.
19 Q. Where do you live, Mr.
20 Thornton?
21 A. 75 Pine Court, Millbrook,
22 Alabama.
23 Q. What county is that located

Page 10

1 in?
2 A. Elmore.
3 Q. What's your date of birth?
4 A. 2/7/56.
5 Q. What is your place of birth?
6 A. Phoenix, Arizona.
7 Q. How long have you lived in
8 Alabama?
9 A. Since '64.
10 Q. Tell me your educational
11 background.
12 A. High school, one year of
13 college.
14 Q. Where did you go to college?
15 A. Isabella High School.
16 Q. Where is that located?
17 A. Chilton County.
18 Q. Where did you go to college?
19 A. George C. Wallace. That's in
20 Selma, Alabama.
21 Q. That's the community college
22 over there?
23 A. Yes, it is.

Page 11

1 Q. And what was your course of
2 study at the George C. Wallace Community
3 College?
4 A. Electronics.
5 Q. Are you married?
6 A. Yes, I am.
7 Q. What's your wife's name?
8 A. Debbie.
9 Q. How long have you been married
10 to Debbie?
11 A. Eight years.
12 Q. Is she employed?
13 A. Yes, she is.
14 Q. Where does she work?
15 A. State Farm Insurance. She's
16 an agent.
17 Q. What kind of insurance
18 products does she sell?
19 A. Life, health, property and
20 casualty, auto. I guess the whole gamut.
21 Q. And where is her office
22 located?
23 A. It's on the northern bypass

Page 12

1 here in Montgomery. I don't know the
2 exact address.
3 Q. How long has she been a State
4 Farm agent?
5 A. With State Farm a year -- a
6 little over a year.
7 Q. And before she was a State
8 Farm agent, what did she do by way of
9 employment?
10 A. She was in the insurance
11 business.
12 Q. And who did she work for?
13 A. AIG, American General.
14 Q. Yes. What kind of insurance
15 products did she sell for AIG?
16 A. Life and health.
17 Q. And how long had she worked
18 for AIG before she moved over to State
19 Farm?
20 A. I would say a year and a half
21 or so.
22 Q. Okay. And what did she do
23 for employment before AIG?

3 (Pages 9 to 12)

Page 13

1 A. She worked for Regions Bank.
2 Q. What was her job with Regions?
3 A. She worked in mortgage
4 finance. I don't know what her title was
5 in mortgage finance.
6 Q. Did she sell mortgages?
7 A. I could not tell you. I do
8 not know.
9 Q. Which location of Regions did
10 she work at?
11 A. Downtown, Montgomery.
12 Q. All right. And how long did
13 she work for Regions?
14 A. 21 years.
15 Q. So, did she retire from
16 Regions then?
17 A. Somewhat, yeah.
18 Q. What was the circumstances of
19 her leaving Regions?
20 A. I had -- I had opened up a --
21 a business, and she just -- she wanted a
22 break from that, plus our first
23 grandchild was born, and she wanted to

Page 14

1 spend time.
2 Q. She basically resigned her
3 job, I guess, at Regions, is that
4 correct?
5 A. Yeah, I would think so, yeah.
6 Q. And what was the business that
7 you had opened?
8 A. It was a security business.
9 Q. What kind of security services
10 did you provide?
11 A. Home -- well, residential and
12 business.
13 Q. What was the name of the
14 company?
15 A. It was American Shield.
16 Q. Is that a sort of a franchise
17 operation or --
18 A. No, sir.
19 Q. It was your own --
20 A. Yes.
21 Q. -- company? And American
22 Shield, was it a partnership, a
23 corporation, a LLC? What was the

Page 15

1 structure of it?
2 A. It was a LLC.
3 Q. And who had an interest in
4 American Shield other than you? Your
5 wife, did she have an ownership interest
6 in it apart from, you know, you?
7 A. No.
8 Q. Okay. Did you have any other
9 employees?
10 A. Yes.
11 Q. How many employees did you
12 have?
13 A. Approximately, 10 to 15.
14 Q. When did you open the doors on
15 American Shield?
16 A. I don't actually recall.
17 Q. Can you give me a year? From
18 the sounds of it, it must have been
19 like '90 -- 2002 maybe, if that coincides
20 with your wife's departure from Regions?
21 A. It may have -- 2002, 2000 --
22 latter part of 2001.
23 Q. Okay. And did you later sell

Page 16

1 that business?
2 A. No, we dissolved the business.
3 Q. When did you dissolve the
4 business?
5 A. I do not recall the date of
6 that.
7 Q. Do you recall what year it
8 was?
9 A. No, I do not.
10 Q. You don't know if it was
11 in '04, '03 or --
12 A. Not an accurate date, I surely
13 do not.
14 Q. Okay. What caused you to
15 dissolve the American Shield business?
16 A. It -- we had some problems
17 within the business. It just wasn't
18 profitable.
19 Q. Can you be a little bit more
20 specific about what caused its demise?
21 A. Not really. There was some --
22 some -- well, there were some situations
23 that it -- it just -- as far as money, as

4 (Pages 13 to 16)

Page 17

1 far as the profitability of the business.
2 Q. Right.
3 A. It just did not -- it just was
4 not profitable, you know, as far as the
5 bottom line, and we just decided it would
6 be more feasible economically to close
7 the business.
8 Q. Did you put it into
9 bankruptcy?
10 A. No, no.
11 Q. Did you pay off all of your
12 creditors?
13 A. Yes, we did.
14 Q. You've been married to Debbie
15 for eight years?
16 A. Yes.
17 Q. Were you married prior to your
18 marriage to Debbie?
19 A. Yes.
20 Q. How many times have you been
21 married total?
22 A. Twice.
23 Q. What is your first wife's

Page 18

1 name?
2 A. Sue -- Sue.
3 Q. And what is her current full
4 name now?
5 A. I do not know.
6 Q. And what was her maiden name?
7 A. Hammond.
8 Q. H-A-M-M-O-N-D?
9 A. Correct.
10 Q. And do you know where she
11 lives?
12 A. Mississippi.
13 Q. Do you know where in
14 Mississippi?
15 A. No, I do not.
16 Q. Do you know if she works?
17 A. I do not.
18 Q. When were you divorced from
19 Sue? What approximate year?
20 A. '94.
21 Q. You mentioned that you gave a
22 deposition previously. Was that in
23 connection with that divorce?

Page 19

1 A. No.
2 Q. Okay. And you have how many
3 children?
4 A. I have four biological, and I
5 have two stepchildren.
6 Q. And can you tell me the names
7 and approximate ages of the four
8 biological children?
9 A. Charlie, Jr. is 27. I hope I
10 get this right.
11 Q. Oh, good. That's good. Do
12 your best.
13 A. Seth is 24. Andy is 18.
14 Shelby is 14. My stepdaughter, Tammy,
15 she's 32.
16 Q. Yes.
17 A. And my stepson is Justin.
18 He's 23.
19 Q. Where is Charlie living these
20 days, Charlie, Jr.?
21 A. Charlie lives in -- he lives
22 in Chilton County.
23 Q. What's he doing up there?

Page 20

1 A. He does construction.
2 Q. And what about Seth, same
3 question?
4 A. Seth is in the military.
5 Q. Where is he right now?
6 A. Fort Hood, Texas.
7 Q. And Andy, your 18-year-old?
8 A. Andy is home with his mom.
9 Q. In Mississippi?
10 A. Yes.
11 Q. And you don't know where that
12 is?
13 A. I don't recall the name of the
14 town.
15 Q. Do you talk to Andy every now
16 and then?
17 A. Yes, I do.
18 Q. When was the last time you saw
19 Andy?
20 A. Two weeks ago.
21 Q. I take it that was here and
22 not Mississippi, then?
23 A. That's correct.

Page 21

1 Q. And did he drive over here to
2 see you?
3 A. Yes.
4 Q. What about Shelby, where does
5 she live?
6 A. That's a he.
7 Q. I'm sorry.
8 A. He lives with his mother also.
9 Q. And you don't know the town
10 where either of these two children live?
11 A. No, sir, I do not.
12 Q. Do you have a phone number for
13 their residence where you would call
14 them?
15 A. Yes, I do.
16 Q. What's that phone number?
17 A. I do not recall that number.
18 I don't have it memorized.
19 Q. Do you recall the area code?
20 A. I'm sorry? What was the
21 question?
22 Q. Do you recall the area code
23 where --

Page 22

1 A. 601.
2 Q. Is it north Mississippi,
3 central Mississippi, southern
4 Mississippi?
5 A. It's in -- around the
6 Hattiesburg area.
7 Q. But it's not in the city of
8 Hattiesburg; it's just near Hattiesburg?
9 A. Right.
10 Q. Do you know where your kids go
11 to high school?
12 A. I do not.
13 Q. Your case is pending here in
14 the Middle District of Alabama which, if
15 my understanding is correct, basically
16 covers Montgomery County, places east of
17 Montgomery County and east of 65 going
18 south. My question to you is do you have
19 any relatives -- I don't care if they are
20 aunts or uncles or cousins or what have
21 you -- living in Montgomery County or any
22 of those other counties I just mentioned
23 to you geographically?

Page 23

1 MR. NELMS: To help you out,
2 that would also be Elmore and Autauga
3 Counties. So, you're talking Autauga,
4 Elmore, Montgomery and then everything
5 east of 65 all the way down to the state
6 line in Florida.
7 MR. SPOTSWOOD: Yes.
8 MR. NELMS: And then 85 all
9 the way out to the Chattahoochee River,
10 and then north of 85 all the way up to
11 Tallapoosa.
12 Q. You've got a better
13 understanding of the counties in the
14 Middle District than I do.
15 MR. NELMS: Well, it's my
16 district, though.
17 MR. SPOTSWOOD: I appreciate
18 it.
19 A. I do not. I do not have any
20 relatives.
21 MR. NELMS: Brothers, aunts,
22 sisters, brothers.
23 A. I have no sisters, no

Page 24

1 brothers. I only have one living aunt on
2 my dad's side. She lives in Chilton
3 County, but I don't think that -- does
4 it?
5 MR. NELMS: Yeah, Chilton
6 County is part too.
7 A. All right. Well, I have one
8 aunt.
9 Q. What's her name?
10 A. Beatrice Cagle.
11 Q. How do you spell that?
12 A. B-E-A-T-R-I-C-E.
13 Q. It's the Cagle part that I'm
14 having trouble with.
15 A. Oh, C-A-G-L-E, I assume.
16 MR. NELMS: I'm one quarter
17 Cagle.
18 A. All right.
19 MR. NELMS: That's how you
20 spell it.
21 A. Thank you.
22 MR. NELMS: My maternal
23 grandmother.

Page 25

1 A. Really.
2 Q. How about your spouse, does
3 Debbie have any relatives in these areas
4 we've been talking about?
5 A. No. Her relatives are in
6 Tallahassee, Florida. Other than my
7 step -- stepchildren.
8 Q. Right. Right. And Justin,
9 what is Justin's last name?
10 A. Seithalil.
11 Q. How do you spell that?
12 A. I have not -- I -- let's see.
13 Let me look.
14 MR. NELMS: You already have a
15 copy of his driver's license, right?
16 MR. SPOTSWOOD: I think I do,
17 yes.
18 MR. PARKER: At least the
19 front of the driver's license we do have.
20 A. It's S-E-I-T-H-A-L-I-L.
21 Q. And your 32-year-old, I wrote
22 it down, but I'm having a hard time
23 reading what I wrote down. What is --

Page 26

1 MR. PARKER: I didn't get it.
2 Q. -- your 32-year-old's name?
3 A. Lewis -- oh, first name?
4 Q. Yeah.
5 A. Tammy.
6 Q. So, it's Tammy Lewis?
7 A. Yes.
8 Q. And what is Tammy -- is Tammy
9 married?
10 A. Yes, she is.
11 Q. What's her husband's name?
12 A. Steve.
13 Q. And where do Steve and Tammy
14 live?
15 A. They live in Millbrook.
16 Q. Okay. What do they do for
17 employment up there?
18 A. Steve is a fireman with the
19 Montgomery Fire Department.
20 Q. Yes.
21 A. And Tammy is a pediatric
22 nurse.
23 Q. Does she work in Montgomery?

Page 27

1 A. She's not working at this time
2 because the -- her kids are small.
3 Q. Okay.
4 A. And she's home with them.
5 Q. Right. And how about Justin,
6 is he married?
7 A. No.
8 Q. What is Justin doing?
9 A. He works in the State Farm
10 office where my wife works.
11 Q. Okay. Just out of curiosity,
12 you know the State Farm offices, do they
13 have a defined geographic area that they
14 serve, or do they have an exclusive
15 territory, or are they out there
16 competing with each other, those various
17 State Farm offices?
18 A. I really -- I can't answer
19 that. I do not know.
20 Q. Okay.
21 A. I don't know.
22 Q. But she's on the bypass, you
23 say?

Page 28

1 A. She's on the northern bypass.
2 The agent's name that owns it is Willie
3 Durham. I do not know the address.
4 Q. Okay. Thank you. Are you
5 attending church at this time?
6 A. Yes, I am.
7 Q. And where do you attend
8 church?
9 A. Camellia Baptist Church.
10 Q. Where is that located?
11 A. In Prattville.
12 Q. And what's the name of the
13 pastor there?
14 A. Glenn Brock.
15 Q. What's your involvement there?
16 A. As much as possible.
17 Q. What do you do there?
18 A. Well, I'm just a -- I'm a
19 member there.
20 Q. Right. But, obviously, based
21 on your prior answer, you do other things
22 and you contribute time, I take it, to
23 other activities. That's what I'm trying

7 (Pages 25 to 28)

Page 29

1 to --
2 A. Sure. It's just according to
3 what activities are within the church.
4 I'm not a Sunday School teacher or
5 anything like that.
6 Q. Do you spend time there during
7 the week on various church-related
8 things?
9 A. We do.
10 Q. How many hours a week would
11 you spend at the church-related
12 activities?
13 A. Well, I don't -- I really
14 don't know how many hours per week.
15 Q. More than 10?
16 A. Probably at least 10 to 15.
17 Q. Are you involved in any other
18 community activities outside of the
19 church?
20 A. No, not really unless it's
21 something to do with my -- my grandson's
22 playing sports, you know, when that's
23 in -- in session.

Page 30

1 Q. Right. Have you ever gone by
2 any name other than Charlie Thornton?
3 A. No, sir.
4 Q. I want to quickly get a handle
5 on what property and investments you own
6 at the present time. Do you own your
7 home?
8 A. Yes, I do.
9 Q. And you gave me the address of
10 that, I think, if I remember correctly?
11 A. Yes, sir.
12 Q. And is your house subject to a
13 mortgage at this time?
14 A. No, sir.
15 Q. All right. And could you
16 describe your home for me?
17 A. I really don't understand the
18 question.
19 Q. I mean, is it a three bedroom,
20 split level, six bedroom, whatever?
21 A. Okay. It's a four-bedroom on
22 a slab.
23 Q. Okay.

Page 31

1 A. Single level.
2 Q. And it's a -- it's not a
3 manufactured home?
4 A. No, sir.
5 Q. It's brick and mortar?
6 A. Right.
7 Q. Do you have any estimate of
8 its present value?
9 A. No, sir, I do not, no.
10 Q. I'm not familiar with the
11 street address. Where are you located?
12 Are you in Wetumpka, are you --
13 A. No, sir. We're in the city of
14 Millbrook.
15 Q. Okay. And how long have you
16 owned your home there? Actually how long
17 have you lived there is what I meant to
18 ask?
19 A. I've been there eight years.
20 Q. Do you own any rental
21 properties of any kind?
22 A. I own my father's home that
23 was deeded over to me at his death.

Page 32

1 Q. Where is that located?
2 A. That's in Chilton County.
3 Q. And are you the only owner?
4 A. Yes, sir.
5 Q. Do you have an address for
6 that?
7 A. 2325 County Road 359,
8 Maplesville.
9 Q. And what does that property
10 consist of?
11 A. A home and acreage.
12 Q. How many acres?
13 A. Total is seven -- seven acres
14 around about.
15 Q. And what's the size of the
16 home?
17 A. I do not know the square
18 footage.
19 Q. Give me bedrooms, just a rough
20 estimate.
21 A. It's a four-bedroom.
22 Q. Is it rented at the moment?
23 A. It is leased with an option to

8 (Pages 29 to 32)

Page 33

1 buy.

2 Q. At what price?

3 A. She's making the mortgage
4 payments on it. Whatever the mortgage
5 is, no extra.

6 Q. Do you remember roughly what
7 that is?

8 A. Four -- 458 a month.

9 Q. And you don't remember,
10 though, what the purchase price on the
11 seven acres and the house would be?

12 A. I don't understand what you
13 mean by purchase price.

14 Q. Well, if she's got the option
15 to buy --

16 A. It will be the -- whatever the
17 amount is owed.

18 Q. That's what I'm asking you,
19 what's the amount owed?

20 A. Oh, okay. Oh, the amount
21 owed, 50 -- 57, 58 thousand.

22 Q. And when did you inherit the
23 property?

Page 34

1 A. At the time of my father's
2 death.

3 Q. Right. Which would have been
4 when?

5 A. Two years -- well, Daddy
6 passed away in June will be two years,
7 this coming June.

8 Q. Okay. June of '04.

9 MR. NELMS: Is that correct,
10 he died in June of '04?

11 A. Yeah, I think that's pretty
12 accurate.

13 Q. Do you own any other real
14 estate?

15 A. No.

16 Q. Do you have any other -- apart
17 from your property interests that you've
18 described, do you have a portfolio of
19 stocks or bonds, a retirement fund or
20 anything like that?

21 A. No.

22 Q. Apart from this case, have you
23 been involved in any -- let me stop. I

Page 35

1 got ahead of myself here. Do you have
2 any interest at present in any business
3 of any kind?

4 A. No, sir.

5 Q. Are you receiving any
6 annuities or any payments on annuities or
7 pension or a disability policy or
8 anything like that?

9 A. No, sir.

10 Q. You mentioned earlier that you
11 had been deposed once before. Can you
12 tell me what that was in connection with?

13 A. It had to do with a -- with a
14 friend -- I don't even really recall.
15 There was a friend involved in selling a
16 security system to a homeowner, and I was
17 present when the transaction took place.
18 And unknowing to the individual, this
19 individual was under contract with
20 another company, and he did not disclose
21 that information to my friend. And
22 they -- when they called me in, they just
23 wanted to know how the transaction went

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1 and what I observed.

2 Q. So, you were just a witness to
3 this dispute, I guess?

4 A. Yes, sir, I guess.

5 Q. And what was the friend's
6 name?

7 A. David Murabito.

8 Q. How do I spell?

9 A. M-U-R-A-B-I-T-O.

10 Q. And do you know -- remember
11 the name of the customer in question?

12 A. No, sir, I don't.

13 Q. But had David been personally
14 sued in connection with the transaction?

15 A. I do not know.

16 Q. And why were you with him in
17 connection with the installation? What
18 brought you there?

19 A. Well, it wasn't the
20 installation. It was the -- the sale of
21 the -- of the equipment. I just happened
22 to be with him that day, and we -- it --
23 he had an appointment to go to the home,

9 (Pages 33 to 36)

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1 and I went with him to the home.

2 Q. Was this at a time when you
3 had your own --

4 A. No, sir.

5 Q. -- company we talked about?
6 When did this all take place?

7 A. I do not recall.

8 Q. Ancient history, five years
9 ago, ten years ago?

10 A. It's been probably four --

11 Q. Okay.

12 A. -- years or more.

13 Q. Have you ever been named as a
14 defendant in a lawsuit?

15 A. No.

16 Q. Have you ever sued anybody
17 other than FedEx in this case? In
18 other -- you can forget about your
19 divorce proceeding.

20 A. Right.

21 Q. I know that was a legal
22 proceeding.

23 A. I don't understand what you

1 Q. What was the nature of the
2 dispute there?

3 A. I had a back injury, and I
4 had -- it had to do with my workmen's
5 comp benefits.

6 Q. Did you --

7 A. And --

8 Q. Go ahead.

9 A. Getting disability on my
10 workmen's comp -- or, you know, to
11 determine the amount of workmen's comp.

12 Q. Do you remember whether or not
13 you did get some sort of a permanent,
14 partial disability rating or finding in
15 connection with that?

16 A. I -- I did get a percentage.
17 I don't even recall what that percentage
18 actually was. I mean, it -- you know,
19 what they did -- I think it's just --
20 just the way that the system is. I mean,
21 they did award a portion of disability.

22 Q. Okay. Do you remember or can
23 you recall what the size of the check was

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Page 40

1 mean by sued.

2 Q. What you did here, you filed a
3 piece of paper in court and claimed
4 compensation from somebody for whatever
5 it is you think they did that caused you
6 harm or injury.

7 A. The only other -- the only
8 other case I had was a workmen's comp
9 case, and that's been years ago. I don't
10 know if that's suing.

11 Q. Yes.

12 A. But --

13 Q. Who was the employer involved
14 in that case?

15 A. It was Brockway Glass Company.

16 Q. And where were they located?

17 A. Here in Montgomery.

18 Q. And do you remember
19 approximately when that happened?

20 A. Approximately, not
21 accurately --

22 Q. Yes.

23 A. -- '79.

1 that you received or if you received just
2 a series of checks over a period of time?

3 A. Well, I received workmen's
4 comp checks --

5 Q. For a while?

6 A. -- when I was out of work.

7 Q. Right.

8 A. And then I think the
9 settlement -- I don't recall the exact
10 amount --

11 Q. Okay.

12 A. -- of what the check was.

13 Q. Can you give me a ballpark?

14 A. To be truthful --

15 Q. Yes.

16 A. -- I really don't -- I really
17 don't remember.

18 Q. Okay.

19 A. I really do not remember.

20 Q. Any other legal proceedings of
21 any kind that you can recall being
22 involved with?

23 A. No, sir.

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Page 43

1 Q. And you've never sought any
2 kind of a disability --

3 A. No, sir.

4 Q. -- from any entity, state or
5 federal, Social Security?

6 A. No, sir.

7 Q. How's your health right now?

8 A. Other than the hypertension, I
9 feel like it's pretty good.

10 Q. All right. Do you feel like
11 the hypertension is under control with
12 the drugs you're taking?

13 A. Well, not with just drugs,
14 but, you know -- yes, I feel like it's
15 pretty much under control.

16 Q. Do you have a cardiologist who
17 you see every six months or so?

18 A. No, I do not.

19 Q. Who prescribes your medication
20 for hypertension?

21 A. Dr. Marla Wool.

22 Q. How do you spell the last
23 name?

1 basically over about a five-year period.

2 I'm going to do that, I hope, with the
3 help of the tax return information that
4 you've given me, and we have some
5 exhibits here on that, so that's where
6 we're going to start. And I'd like to
7 start with -- with 2006, and, of course,
8 I know we don't have any tax return
9 information so far, but where are you
10 working right now?

11 A. UniFirst Corporation.

12 Q. That's U-N-I-F-I-R-S-T?

13 A. That's correct.

14 Q. And where is it located?

15 A. Branch office is in Millbrook.

16 Q. And what is the nature of the
17 business?

18 A. Uniform supply.

19 Q. What is your job with
20 Uniform -- UniFirst, rather?

21 A. Territory manager.

22 Q. And tell me what you do as a
23 territory manager.

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Page 44

1 A. W-O-O-L.

2 Q. And where is Marla located?

3 A. She is located in Millbrook.

4 Q. And she's just a regular care
5 physician?

6 A. Yes.

7 Q. Apart from Marla --
8 (Off-the-record discussion.)

9 Q. (BY MR. SPOTSWOOD:) Apart
10 from Marla, are you under the care of any
11 other medical professional, whether it's
12 a psychologist, a psychiatrist --

13 A. No.

14 Q. -- anybody else?

15 A. No, sir.
16 (Off-the-record discussion.)

17 Q. (BY MR. SPOTSWOOD:) Yeah, let
18 me just tell you where I'm going here to
19 kind of help bring things along, Mr.
20 Thornton. What I want to do now is move
21 to your employment history really going
22 both from basically the present backwards
23 to find out where you've actually worked

1 A. I manage the territory that --
2 protect a territory and, also, I sell in
3 that territory.

4 Q. Do you have drivers and others
5 that report to you as the manager?

6 A. No.

7 Q. Well, how -- what do you do on
8 a regular basis is what I'm trying to get
9 to, what are your regular job functions?

10 A. It's customer service
11 basically. I have customers within that
12 territory that I just maintain, manage,
13 make sure everything is going smoothly
14 with their deliveries and stuff like
15 that, and then I report directly to a
16 branch manager.

17 Q. And, so, there is somebody
18 riding around in a truck that picks up
19 and delivers uniforms --

20 A. Oh, sure.

21 Q. -- to various entities, and
22 that's really the nature of the business,
23 correct?

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1 **A.** Yes.
2 **Q.** So, you are making sure that
3 the service is good and that they don't
4 have any complaints and that, you know,
5 they are paying their bills and you're
6 doing what you are supposed to be doing?
7 **A.** My main function is selling.
8 **Q.** And, so, how do you go about
9 doing that? Are you soliciting people,
10 cold calling them?
11 **A.** Several different ways.
12 **Q.** Okay. Well, tell me what they
13 are.
14 **A.** I do cold calling, solicit,
15 referrals.
16 **Q.** And are you paid on a
17 commission basis?
18 **A.** Commission plus salary.
19 **Q.** And what is -- tell me the
20 exact structure of your compensation.
21 **A.** What do you mean by that?
22 **Q.** What -- well, let's begin with
23 this: When did you start working at

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1 UniFirst?
2 **A.** It was approximately eight
3 weeks ago.
4 **Q.** What is your base salary?
5 **A.** My base salary is six -- six
6 hundred a week.
7 **Q.** And what is your -- how is
8 your commission computed?
9 **A.** It's computed several
10 different ways. There's no set way of
11 computing commissions. It's according --
12 it's based on what you sell, the price
13 you sell it for, length of time for the
14 agreement.
15 **Q.** But you have an agreement --
16 you have it written down what your
17 commission arrangement is, I take it?
18 **A.** I have a structure according
19 to the -- whatever your sale is.
20 **Q.** Okay. But you can figure out,
21 I take it, when you get a paycheck
22 whether or not your paycheck has been
23 properly computed?

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1 **A.** Sure. Yes.
2 **Q.** Can you tell me what your
3 compensation has averaged since you began
4 working eight weeks ago on a weekly
5 basis?
6 **A.** Six hundred a week. I've just
7 got into the commission phase of it.
8 **Q.** So, you're just now working --
9 **A.** Basically in training.
10 Getting out of training. Not actually
11 getting out of training. I've got into
12 the selling mode. We were in a training
13 mode.
14 **Q.** So, beginning what, in April
15 you should start seeing some commission
16 checks, is that what you're saying, maybe
17 next month?
18 **A.** Possibly, yeah.
19 **Q.** Maybe this month too?
20 **A.** Oh, I'm not -- no, it will not
21 be this month.
22 **Q.** Who is your immediate
23 supervisor there?

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1 **A.** Acting branch manager is Dan
2 Cohen.
3 **Q.** Where is Mr. Cohen located?
4 **A.** Millbrook.
5 **Q.** Let me ask you to have a look
6 at Defendant's Exhibit A.
7 (Whereupon, Defendant's
8 Exhibit A was marked for
9 identification.)
10 MR. NELMS: Have you got a
11 copy for me? Or do you want me to get
12 my --
13 MR. SPOTSWOOD: Yeah. Let him
14 look at that, if you don't mind.
15 **Q.** (BY MR. SPOTSWOOD:) What I
16 want to do, first of all, is make sure I
17 have everybody you worked for in 2005,
18 and I show that you worked at True Green
19 Limited is one of the entities reflected
20 on your W-2 for 2005, and then I've
21 got -- frankly, I've got another one here
22 that I can't read. This is -- this is
23 reflecting wages of \$720. Do you know

12 (Pages 45 to 48)

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1 who that was? I can't read this. It
2 shows an Overland Park, Kansas address.
3 Do you remember who that was?
4 A. No, sir, I don't.
5 Q. And, then, I show a THD At
6 Home Services.
7 A. Yes.
8 Q. And then I show some
9 compensation from FedEx while you were in
10 the training mode. All right?
11 A. Yes.
12 Q. Apart from the income
13 reflected on these four W-2 forms, did
14 you have any other income in 2005?
15 A. No, sir.
16 Q. Now, let's start with --
17 A. Okay. I know who this is.
18 Q. Okay. Who is that?
19 A. That was with DHL.
20 Q. DHL?
21 A. DHL.
22 Q. A delivery service?
23 A. Yes. You said 2005.

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1 Q. Right.
2 A. Right?
3 Q. Yes, sir. Let's talk about --
4 why don't we do these in order. Which
5 one were you first employed by in 2005?
6 A. That would have been True
7 Green.
8 Q. All right. What did you do
9 for True Green?
10 A. I was a sales rep.
11 Q. What was the nature of their
12 business?
13 A. They do fertilizations,
14 spraying of lawns, insect control.
15 Q. And who was your supervisor
16 there?
17 A. I do not even recall his name.
18 I don't know.
19 Q. How long did you work there?
20 A. It was a very short period of
21 time. That was before I -- well,
22 actually it was a very short period of
23 time, and then I went on with the FedEx

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1 company.
2 Q. Did you quit that job, or were
3 you terminated from it, what happened?
4 A. I turned in my -- a notice.
5 Q. Where was their office
6 located?
7 A. Here in Montgomery.
8 Q. Can you help me out a little
9 bit more than that?
10 A. It's in the north -- it's off
11 the northern bypass.
12 Q. It would be listed in the
13 Yellow Pages as True Green Limited?
14 A. No, sir. It's True Green
15 ChemLawn.
16 Q. Okay. And what was your next
17 employer in 2005 other than your training
18 time at FedEx?
19 A. That would have been with DHL.
20 Q. All right. Which location for
21 DHL did you --
22 A. It's here in Montgomery.
23 Q. Do you recall roughly where

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1 the office is located?
2 A. It's off the northern bypass
3 also. I don't -- I really don't recall
4 the address.
5 Q. What kind of facility was it?
6 A. It's a terminal, delivery
7 terminal.
8 Q. Who was your supervisor there?
9 A. I do not recall his name
10 either.
11 Q. Was it a -- can you give me a
12 description of him?
13 A. A description of the
14 individual?
15 Q. Yes. You know, skin color,
16 hair color.
17 A. He was a black guy.
18 Q. Approximate age?
19 A. Oh, I have no idea. 20s, 30s.
20 Q. All right. And what did you
21 do for DHL?
22 A. I delivered packages.
23 Q. Were you a -- did you have a

13 (Pages 49 to 52)

Page 53

1 particular route?
2 A. Yes, I did.
3 Q. Where was your route?
4 A. Elmore County.
5 Q. Were you an employee or an
6 independent contractor?
7 A. I was an employee.
8 Q. How long did you work for DHL?
9 A. I don't recall that length of
10 time.
11 Q. A couple of weeks, a month?
12 A. It was probably around three
13 weeks, looking at the pay.
14 Q. And do you have any
15 recollection of what period of time it
16 was, whether it was in the summer or was
17 it in --
18 A. It was in the summer.
19 Q. And what happened with respect
20 to that job? Why aren't you still
21 working at DHL?
22 A. Well, at the time I was also
23 trying to get on with -- At-Home Services

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1 is actually Home Depot, but it was
2 working 60, 70 hours a week, and the pay
3 was -- it was nothing. \$400 a week at 60
4 to 70 hours a week. No overtime.
5 Q. What was your hourly rate?
6 A. I do not even know because
7 they -- they started us -- started me at
8 400. They started everybody else at 375.
9 The only reason why they started me at
10 four hundred was because I had went
11 through the training at FedEx.
12 Q. And you were working a minimum
13 of 60 hours a week without any additional
14 compensation?
15 A. That's exactly right.
16 Q. You were a salaried employee,
17 is that what you're saying?
18 A. That's exactly right.
19 MR. NELMS: Off the record.
20 (Off-the-record discussion.)
21 Q. (BY MR. SPOTSWOOD:) So, in
22 any event, Mr. Thornton, you quit the job
23 because you didn't like the working

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1 conditions and the compensation package
2 basically?
3 A. And I had the opportunity to
4 interview with Home Depot. Of course,
5 the pay was -- it was tough, from seven
6 to seven at night and every weekend, you
7 know.
8 Q. You were working on Saturdays
9 and Sundays?
10 A. Not Sunday.
11 Q. But you were working Saturday?
12 A. Yes.
13 Q. How many hours on Saturday?
14 A. Well, that would vary because
15 you had packages to deliver, and you had
16 to complete your -- your route for the
17 day. And during the week it was not like
18 from seven to seven. You worked until
19 you completed your -- your route for that
20 day.
21 Q. And you don't remember your
22 supervisor's name over there?
23 A. Honestly, no.

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1 Q. Okay. And so, you resigned
2 that job?
3 A. Yes.
4 Q. And, then, did you have a job
5 at the time you resigned with Home Depot?
6 A. What was the question again?
7 Q. At the time you resigned from
8 DHL, did you have a job with anybody
9 else?
10 A. I -- yes, I had the job with
11 Home Depot.
12 Q. And that's, I think, listed on
13 the W-2 form, Exhibit A, as THD At-Home
14 Services?
15 A. Right, the Home Depot At-Home
16 Services.
17 Q. All right. And what was your
18 job there?
19 A. Sales, selling roofing, siding
20 and window products to homeowners.
21 Q. What location did you work out
22 of?
23 A. Montgomery.

14 (Pages 53 to 56)

Page 57

Page 59

1 Q. Were you actually calling on
2 people at their homes, or was this within
3 a Home Depot store?

4 A. No, this was actually running
5 appointments that were set up through the
6 store. I didn't have anything to do with
7 the store. Appointments were set up,
8 sent over to us by e-mail, and then we
9 went to the home, met with the homeowner.

10 Q. And you would then what,
11 decide what they needed and sign them up
12 on a contract to have the roofing, siding
13 or window products purchased and
14 installed?

15 A. That's correct.

16 Q. And how were you compensated
17 for that?

18 A. Strictly commission.

19 Q. What was your commission rate?

20 A. It varied with the product.
21 From eight to ten percent.

22 Q. We showed that you received,
23 according to Exhibit A, your -- your W-2

1 way to say, well, I had two appointments
2 each day.

3 Q. Well, it seems like -- and
4 your answer may have just explained it.
5 It seems a very modest amount of
6 compensation running over a three-month
7 period of time?

8 A. Well, exactly right. As far
9 as being competitive in the market, Home
10 Depot in this area was not very
11 competitive at all. When it comes to the
12 roofing products, in this area there's --
13 to give you an example, there's a hundred
14 and twenty roofing companies in the city
15 of Montgomery, and Home Depot, normally
16 their prices were twice as much as Joe's
17 Roofing out here, to give you an example.
18 So, they were not competitive at all.

19 And -- but I mean, you know, there was a
20 job to be done, and you were to run your
21 appointments. There was no compensation
22 for mileage. It was straight commission.

23 Q. During this period -- it

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Page 60

1 earnings \$2689?

2 A. Right.

3 Q. How long did you work there?

4 A. I worked with Home Depot up
5 until the time I took the job with
6 UniFirst.

7 Q. So, when did you begin with
8 Home Depot, sometime in the summer?

9 A. Yes.

10 Q. How many hours a week were you
11 working at the Home Depot?

12 A. That would vary, and that was
13 one of the issues with Home Depot. Of
14 course, you had appointments set up
15 daily. Sometimes you may have one
16 appointment. You may have two. Some
17 weeks you only had maybe two appointments
18 in a whole week. That was the -- that
19 was the big issue that I had with those
20 guys. But as far as hours, an
21 appointment would normally take two,
22 possibly three hours, but the
23 appointments were so sporadic there's no

1 basically sounds like you were working
2 part-time. During this period were you
3 working anywhere else?

4 A. No.

5 Q. Were you aware when you
6 accepted the position at Home Depot and
7 resigned from your job at DHL that there
8 was going to be no guarantee of any
9 particular volume of appointments in any
10 particular week?

11 A. I knew that there would be
12 appointments, but I did not know how many
13 appointments.

14 Q. When did you start looking for
15 something else, other than Home Depot?

16 A. I was continually looking for
17 something with a better income from the
18 get-go.

19 Q. I think -- where is that
20 printout?

21 MR. PARKER: Look at the
22 exhibit list. It's Exhibit G.

23 MR. NELMS: While we're off

15 (Pages 57 to 60)

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Page 63

1 the record.

2 MR. SPOTSWOOD: Yeah.
3 (Off-the-record discussion.)
4 (Said deposition was in recess
5 at 10:32 a.m. until 10:38
6 a.m., after which the
7 following occurred:)

8 Q. (BY MR. SPOTSWOOD:) Have a
9 look at Exhibit G from the stack over
10 there.

11 (Whereupon, Defendant's
12 Exhibit G was marked for
13 identification.)

14 Q. This was the document I think
15 that was produced to us in response to
16 our request for what other jobs you were
17 looking for during this period of time,
18 and what I want to know is what exactly
19 did you make application for from this
20 list that's shown here on Defendant's
21 Exhibit G?

22 A. Oh, there's -- there's no
23 telling. There's no way I can tell you

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Page 64

1 that. There were several I made
2 application for. Everything that I
3 clicked on on this right here I made
4 application. I sent a resume to.

5 Q. But you're not saying you --
6 you -- I mean, what we have here is a
7 website that says careerbuilder.com?

8 A. Exactly right.

9 Q. And it's got a bunch of job
10 titles here, and everything from sales
11 manager to field service representative
12 to driver, there are 18 pages, according
13 to this thing, and at least on this
14 particular one, this is 1-18 of 18. And
15 I guess what I'm asking you is I assume
16 you didn't apply for all of these jobs.
17 Do you know what you applied for?

18 A. Yes, I did. I sent resumes to
19 all of these jobs. Those are the ones
20 that were -- it showed that I applied.
21 As a matter of fact, there's more than
22 that because if you'll see at the top, it
23 says deleted after two months.

1 Q. Yes.

2 A. I never realized that I would
3 need this until I got the information
4 from Andy, and that's when I went on and
5 tried to catch it and print it off -- off
6 the Internet.

7 Q. And, so, what you're saying,
8 if I look down on the bottom here to the
9 location on the Internet, it says, among
10 other things, careerbuilder.com, job
11 seeker jobs, my saved jobs. So, on
12 jobs -- on this careerbuilder.com, did
13 you have a list of saved jobs that you
14 were trying to print this from?

15 A. That -- this is the saved jobs
16 list.

17 Q. Okay.

18 A. The ones that I applied to.

19 Q. And are you saying -- it says
20 1-18 of 18, so are -- am I missing
21 something here? Is this just page one of
22 18 pages worth of jobs that you
23 actually --

1 A. That's one of 18 of 18.

2 Q. Oh, I see, of the actual jobs
3 listed above. All right.

4 A. This is all that I could pull
5 off, and then if you go to -- on the back
6 page there's one monster.com. Those are
7 the ones there that I sent resumes to.
8 But there were several, several more
9 because I -- like I say, it deleted them
10 off after two months.

11 Q. So, you applied -- let's just
12 look over here on the last -- the second
13 to the last page, you applied for a
14 restaurant manager job?

15 A. I surely did.

16 Q. And you applied as a
17 collector?

18 A. Yes.

19 Q. You applied as a benefits
20 recruiter?

21 A. Yes.

22 Q. Had you ever worked in the
23 restaurant business?

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A. No. But I felt like I had management experience.

Q. And can you tell us what companies you were making applications for? For example, on 1/21/2006, it says managers and assistant managers. Do you remember who that was?

A. No, I do not.

Q. It says apply online, question mark. What does that mean?

A. I have no idea. That's their website. That's -- I didn't -- these are -- but I know this: These are the ones that I applied to.

Q. Okay. But you were not able to, when you printed this out, to also print out what job it was; you couldn't click on the job and find out what job it was, who you were actually applying to? Surely there's some more detail here.

A. I knew I had to have a list of where I had applied.

Q. Yes.

Exhibit B the tax return you and your wife filed for the tax year 2004 with the federal government?

A. Yes.

Q. And does it accurately reflect all of the income that you and she received that year?

A. Yes.

Q. It reflects that you received some \$28,358 in wages from American General Life and Accident Insurance Company, on page --

A. Correct.

Q. -- two. What were you doing for American General?

A. I was an agent.

Q. What kind of products were you selling?

A. Life and health.

Q. And how long did you have that job?

A. It was 14 months.

Q. And your wife had a similar

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A. This is what I went to and printed off.

Q. Okay.

A. Whether I could have went in and printed off each, I don't know if I could have done that or not.

Q. All right. I want to go to your 2004 tax return, which, along with the W-2 forms, is marked as Exhibit B.

(Whereupon, Defendant's Exhibit B was marked for identification.)

A. Can I ask you a question outside?

MR. SPOTSWOOD: Sure. Go ahead.

A. If you don't mind, I'd appreciate it.

(Said deposition was in recess at 10:44 a.m. until 10:48 a.m., after which the following occurred:)

Q. (BY MR. SPOTSWOOD:) Is

level of income from the same company. What was she doing?

A. She was an agent.

Q. And where was your office located?

A. In Montgomery.

Q. Did you guys work out of your home, or were you working from an office?

A. No, we worked out of an office.

Q. Do you remember what the address was of that office?

A. No, sir. It was on the Atlanta Highway.

Q. So, if I'm not mistaken here, from the looks of things, you worked all of 2004 for American General?

A. Yes.

Q. And why did you -- when did you terminate your employment at American General?

A. It would have been December of 2004.

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1 Q. And why did you decide to
2 leave that job?

3 A. The actual reason was because
4 of chargebacks, people dropping their
5 insurance and them charging me back for
6 the commissions that they had already
7 paid, and that was -- that's the reason.

8 Q. If I understand the way that
9 works, and please correct me if I'm
10 wrong, the chargeback, the company had a
11 policy that allowed them to come back and
12 deduct from your other commission checks
13 that you were earning certain commissions
14 that you had already been credited when
15 people canceled a policy within a period
16 after the sale?

17 A. That's correct.

18 Q. And that was a policy that you
19 didn't care for and didn't think was
20 appropriate?

21 A. I don't understand your
22 question.

23 Q. What caused you -- what was

1 A. Right.

2 Q. And what were you --

3 A. I was still a licensed agent
4 -- agent at the time.

5 Q. And what did you then look
6 for?

7 A. I went to work with True
8 Green. As a matter of fact, they lost
9 several agents at the end of 2004 because
10 of the same problem.

11 Q. Who owned the agency where you
12 worked?

13 A. It was company owned.

14 Q. Who was your immediate report,
15 direct supervisor?

16 A. Lee Crawford.

17 Q. Is he still there, as far as
18 you know?

19 A. I do -- I don't know. I
20 really don't know. I haven't -- I don't
21 know.

22 Q. Did your wife, Deborah, also
23 terminate her employment there?

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1 the problem you had with that policy?

2 A. I didn't have a -- well, it --
3 you're talking about the company policy.
4 Okay. When you said policy, I'm sorry, I
5 thought you were talking about the
6 insurance policy.

7 It was the amount that hit.
8 It had actually -- over a short period of
9 time going into the latter months of
10 2004, there was so much business that
11 dropped off the books that my pool that I
12 drew my income from was just about
13 nothing, so my income had dropped
14 tremendously.

15 Q. And that was because there was
16 poor retention, is that the terminology?

17 A. A very poor retention not --
18 throughout the company, business
19 retention.

20 Q. So, you thought that was not a
21 good economic deal for you and you quit?

22 A. It was not, no.

23 Q. And looked for something else?

1 A. Yes, she did. Not at the same
2 time.

3 Q. It looks like she also worked
4 at least for a period of time with
5 Liberty National. What was she doing
6 there?

7 A. She was an agent.

8 Q. Was that before or after her
9 time with American General?

10 A. That was before. As a matter
11 of fact, she took the job -- I was
12 offered the job at State Farm, but at the
13 time I was with -- going through FedEx,
14 and I declined the job and recommended
15 her -- her the job with State Farm.

16 Q. And she took that job?

17 A. And she took that job.

18 Q. Let's have a look at
19 Defendant's Exhibit C, which is, I
20 believe, your tax return for 2003.
21 (Whereupon, Defendant's
22 Exhibit C was marked for
23 identification.)

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Page 75

1 Q. Let me ask you to confirm that
2 Exhibit C is your federal income tax
3 return for the calendar year 2003 plus
4 the W-2 forms reflecting income you and
5 your wife received that year?

6 A. Yes, sir.

7 Q. It looks to me from this tax
8 return that you and your wife reported a
9 total of \$25,884 in wages and salaries
10 for that year, is that correct?

11 A. Yes, sir.

12 Q. And is that -- is that, in
13 fact, the total income that you and she
14 received for that year?

15 A. Yes, sir.

16 Q. I may be missing something
17 because it appears that I do not have W-2
18 forms that add up to all that much money.

19 MR. PARKER: I think he may
20 have had self-employment income.

21 Q. Is that correct? Did you have
22 some self-employment income this year,
23 2003?

1 was T's next to them. And I said, well,
2 that's not right. They didn't get tips.
3 Taxpayer, maybe, I don't know, spouse --

4 Q. That's what I thought it might
5 be, spouse and then taxpayer. Did your
6 wife work that year at J. B. Hunt --

7 A. No.

8 Q. -- or American General Life?

9 A. No, that was me.

10 Q. I think that's what that
11 probably means then.

12 Would it be your recollection
13 that in 2003 your wife did, in fact, earn
14 the majority of the income from Liberty
15 National, that she worked there a lot
16 longer than you did?

17 A. She -- yes, she did work there
18 longer than I.

19 Q. Okay. So, based on that -- I
20 mean, this indicates that you received
21 wages from J. B. Hunt Transport of \$1800,
22 wages of \$3900 from American General Life
23 and wages of \$3471 from Liberty National?

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1 A. No.

2 MR. NELMS: I don't know.

3 A. I mean --

4 Q. Oh, I see. Okay. Let's flip
5 over to salary and wages report which
6 is -- which is the -- it looks to me like
7 it's about -- oh, I don't know. I didn't
8 number these pages. I'll count them. If
9 I did that correctly, it's on page 19 of
10 this exhibit.

11 A. Okay. That's where we're at.

12 Q. Yeah. It looks like we have
13 federal wages from Liberty National Life
14 of \$16,713. Whose wages were those, your
15 wife's or yours?

16 A. Oh, I -- I don't know. It's
17 not listed on there which one was which.
18 I have no idea.

19 Q. Does anybody know what T
20 hyphen S means at the top of that form?

21 MR. NELMS: I was thinking
22 salary or tips or something like that,
23 but I -- I looked down there and there

1 A. Yes.

2 Q. Would that all suggest to you
3 that it's your wife who earned the
4 \$16,713 from Liberty National?

5 A. All I can say is that she was
6 there longer than I at Liberty National.

7 Q. Okay.

8 A. I mean --

9 Q. I think the form actually is
10 self-explanatory here. If you note below
11 those figures I just gave you --

12 A. Right.

13 Q. -- it says taxpayer \$9,171;
14 spouse, \$16,713, for a total of \$25,884,
15 and you are listed as the taxpayer here
16 on the second line, if joint return, SP
17 first name and initial, which is your
18 spouse. So, does that clarify things?

19 A. Some -- somewhat, I guess.

20 MR. NELMS: If I might, is
21 that your Social Security number?

22 A. Yes, it is.

23 MR. NELMS: Okay. And you're

19 (Pages 73 to 76)

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1 identified as taxpayer, right?
2 **A.** That's what he's saying, yes.
3 **Q.** And you don't -- you don't
4 have any reason to dispute that is what
5 I'm trying to get to?
6 **A.** No, sir.
7 **Q.** All right. So, good. Tell me
8 the order of your employment with these
9 companies in 2003. Who were you employed
10 by?
11 **A.** Well, it was J. B. Hunt
12 actually first and then Liberty National.
13 **Q.** And then American General?
14 **A.** American General.
15 **Q.** What were you doing for J. B.
16 Hunt Transport?
17 **A.** J. B. Hunt, I was a recruiter
18 for those guys.
19 **Q.** What was J. B. Hunt?
20 **A.** It's a trucking company. It's
21 a transportation company.
22 **Q.** Are they an LTL carrier? Less
23 than truckload?

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1 **A.** Beg your pardon?
2 **Q.** What kind of carrier are they?
3 **A.** Just over-the-road
4 tractor-trailer.
5 **Q.** And they'll pick up less than
6 a truckload and take it place to place?
7 **A.** I have no idea. I do not know
8 that.
9 **Q.** So, what, you were recruiting
10 drivers for them?
11 **A.** Yes. Yes.
12 **Q.** How would you go about doing
13 that?
14 **A.** Just solicitation at the
15 different truck stops, fliers.
16 **Q.** Put ads in the paper?
17 **A.** I never put any ads in the
18 paper.
19 **Q.** All right. And how were you
20 compensated by J. B. Hunt?
21 **A.** It was -- they paid me weekly.
22 **Q.** Were you on a salary, or did
23 your success rate --

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1 **A.** It was a salary.
2 **Q.** Do you recall what the weekly
3 salary was?
4 **A.** No, sir, I do not. I do not
5 recall.
6 **Q.** And did you quit that job?
7 **A.** I left there to go to work
8 with Liberty National.
9 **Q.** So, you resigned from that
10 employment?
11 **A.** Yes, I did.
12 **Q.** Where was the location that
13 you worked out of for J. B. Hunt?
14 **A.** Arkansas.
15 **Q.** Okay.
16 **A.** Yeah, it was Arkansas. Home
17 headquarters.
18 **Q.** The headquarters for J. B.
19 Hunt?
20 **A.** Yes.
21 **Q.** Do you remember the name of
22 your supervisor there?
23 **A.** No, I do not.

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1 **Q.** How long did you work for J.
2 **B.** Hunt total?
3 **A.** I have no -- I don't -- I have
4 no recollection -- recall of that. I do
5 not know. I don't remember.
6 **Q.** Okay. And then I think you
7 said you went directly to Liberty after
8 that?
9 **A.** Yes.
10 **Q.** And what were you doing for
11 Liberty?
12 **A.** I was an agent.
13 **Q.** Selling?
14 **A.** Life and health.
15 **Q.** And that was pure commission,
16 salary plus commission?
17 **A.** There was a training salary,
18 and then it went from the training
19 salary -- you had a training salary, and
20 then you had a commission pool that you
21 drew your pay off of percentagewise.
22 **Q.** Yes.
23 **A.** And that's the way that

20 (Pages 77 to 80)

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1 worked. I don't remember what the
2 training salary was right offhand.

3 Q. All right. And then you
4 resigned from your employment at Liberty,
5 is that correct?

6 A. No, actually that was before I
7 was a licensed -- I had my insurance
8 license, and in the state when you take
9 your license to become an agent, you
10 have, if I'm -- I think I'm correct with
11 this. I think you can take your test
12 twice. If you fail it twice, you've got
13 to wait six months before you take your
14 test again.

15 Q. Yes.

16 A. And I did not pass my tests.
17 Well, they could not keep me on. So, I
18 moved -- I mean, that ended my job,
19 basically.

20 Q. Do you remember when you
21 failed the test and had to leave?

22 A. No, sir, I do not. I don't
23 remember that. I know I went from there

1 employed each week during that year?

2 A. No, sir, I was employed.

3 Q. Have a look at, if you would,
4 Defendant's Exhibit D, which is your 2002
5 tax return.

6 (Whereupon, Defendant's
7 Exhibit D was marked for
8 identification.)

9 Q. This reflects wages, salaries
10 and tips on page three, I'm looking at
11 line seven, of \$22,837. And then
12 business income of \$4402 and then a
13 capital loss of \$3,000, for total income
14 that year of \$25,146. Is that correct?
15 Is that what your total income was that
16 year?

17 A. Yes.

18 Q. And on the wages component, it
19 looks like we have for you wages of a
20 little over \$5900 from Dixie
21 Homecrafters. That's on page one, the
22 second W-2, correct?

23 A. Yes, sir.

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1 to -- to American General and went
2 through their training, and, I mean, I
3 had no problems passing the test. I --
4 you know, I -- I received my license at
5 that point in time with American General.

6 Q. So, did you have a six month
7 period of unemployment there?

8 A. No, huh-uh. It was just very
9 quick transition, maybe a week to two
10 weeks, you know.

11 Q. And then you were able to
12 retake the exam --

13 A. Yes.

14 Q. -- before that six months
15 period expired?

16 A. Oh, yes. It was either -- I'm
17 saying six months. It may have been four
18 months. Four to six months you had a
19 downtime that the State would not let you
20 take the test, but I took it, and I
21 passed it.

22 Q. Did you have any periods of
23 unemployment during 2003, or were you

1 Q. And, then, we have roughly
2 \$971 from SCI Management, LP?

3 A. Yes.

4 Q. What is that entity?

5 A. That's -- I worked with --
6 actually it was Green -- Green --
7 Greenwood Funeral Service. Cemetery, not
8 the funeral home, but the cemetery.

9 Q. What were you doing with them?

10 A. I was sales, lots.

11 Q. Selling lots in a cemetery?

12 A. Yes. And headstones and stuff
13 like that.

14 Q. And then the next page of the
15 Exhibit D, I show you as having roughly
16 \$4800 in income from Sears Home
17 Improvement Products?

18 A. Yes.

19 Q. What were you doing with them?

20 A. It was home improvement.

21 Q. Was that --

22 A. Windows and siding.

23 Q. Were you calling on people, a

21 (Pages 81 to 84)

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1 similar deal --

2 A. Yes.

3 Q. -- where the store sets up an
4 appointment and --

5 A. No, sir. This was not
6 connected to the store at all. It was
7 actually -- our appointments were
8 generated out of Atlanta through fliers,
9 telemarketing and such, and we would run
10 the leads from that.

11 Q. By running leads, you would
12 then call on people?

13 A. Appointments. No, sir, I
14 didn't, but they did, so it was
15 appointments. It was set appointments.

16 Q. Okay. Was that a commission
17 only deal?

18 A. Yes, sir, it was.

19 Q. How long did you work for
20 Sears Home Improvement?

21 A. Oh, I don't know. I worked
22 with those guys until they closed the
23 office here in Montgomery.

1 (Whereupon, Defendant's
2 Exhibits E and F were marked
3 for identification.)

4 Q. Are these two -- let's look at
5 E first. Is Exhibit E your 2001 federal
6 income tax return?

7 A. Yes, sir, it is.

8 Q. And does it accurately reflect
9 the income you and your wife received for
10 that year?

11 A. Yes, sir.

12 Q. And when I flip over to the
13 same salary and wages report that we just
14 talked about a minute ago for another
15 return, page 11 --

16 A. Okay.

17 Q. -- it looks like for the
18 taxpayer, which we determined is you, we
19 have a little over \$28,000 for Sears Home
20 Improvement, \$3,300 for Swift
21 Transportation --

22 A. Yes.

23 Q. -- \$418 for Drivers

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Page 88

1 Q. And what were you doing with
2 Dixie Homecrafters?

3 A. Same -- same thing, a few more
4 products. They had siding and gutters.

5 Q. What was the sequence of your
6 employment here in 2002?

7 A. I was with Home -- I was with
8 Home Depot. I went with Dixie
9 Homecrafters and then with SCI.

10 Q. Well, you said Home Depot.
11 Did you mean to say Sears Home
12 Improvement?

13 A. Oh, I'm sorry. Yes, Sears
14 Home Improvement.

15 Q. Okay. And how long during
16 2002 did you work for each of these?

17 A. I do not recall.

18 Q. And Exhibit D is your tax
19 return that you filed with the government
20 for calendar year 2002?

21 A. Yes, sir.

22 Q. Why don't you take a quick
23 look at Exhibits E and F?

1 Management?

2 A. Right.

3 Q. Those are all of the jobs you
4 had that year?

5 A. Yes.

6 Q. And were you working with
7 Swift Transportation and then resigned
8 from them --

9 A. Yes, I did.

10 Q. -- to go to work at Sears?
11 Correct?

12 A. Yes.

13 Q. So, did you work the bulk of
14 the year at Sears, does it appear?

15 A. I do not recall if it was the
16 bulk of the year or not.

17 Q. Well, certainly the bulk of
18 your earnings were with Sears that year?

19 A. Yes.

20 Q. And, then, what is Drivers
21 Management?

22 A. It was just a -- I guess a
23 training division of Swift.

22 (Pages 85 to 88)

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1 Q. What did you do for Swift?
2 A. I drove for those guys.
3 Q. Were you an over-the-road
4 driver?
5 A. No, a regional.
6 Q. What does that mean?
7 A. Southeast, just the southeast.
8 Q. But you were driving a big
9 tractor-trailer truck?
10 A. Yes.
11 Q. And how was your compensation
12 computed for that?
13 A. So much per mile.
14 Q. And did you own your truck or
15 rent it?
16 A. No, sir, it was company owned.
17 Q. Company-owned truck. I'm
18 sorry.
19 A. Yes, sir.
20 Q. And did you resign that job to
21 go to work at Sears?
22 A. Yes, I did.
23 Q. Okay. Let's go to Exhibit F,

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1 which is your 2000 federal tax return, is
2 it not?
3 A. Yes, sir.
4 Q. And that's for both you and
5 your wife Deborah?
6 A. That's correct.
7 Q. If you'll flip over to about
8 page five or so, I am seeing an income
9 from partnership and S corporations of
10 roughly \$18,986 from an entity called
11 Security Experts, LLC?
12 A. That's correct.
13 Q. Is that the company that you
14 owned?
15 A. That was the -- that was the
16 other company. I had actually two
17 security companies.
18 Q. Okay. And how long had you
19 owned -- who else owned an interest in
20 this, anyone other than you, did your
21 wife?
22 A. Yes.
23 Q. Who else owned an interest in

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1 it?
2 A. David Murabito.
3 Q. Okay.
4 A. We were just actually
5 partners.
6 Q. Okay. I may have asked this
7 previously, but where is David today?
8 A. David is in Tampa, Sarasota,
9 Florida area.
10 Q. What's he doing down there?
11 A. He works for Home Depot
12 At-Home Services. The last I spoke with
13 him, he was with Home Depot.
14 Q. I see in addition to the
15 income from that entity on the salaries
16 and wages report that we've been looking
17 on the previous tax returns, this one
18 shows taxpayer, namely, you receiving
19 \$21,997 from Edison Security?
20 A. Yes.
21 Q. Who owned Edison Security?
22 A. Wes-Tech Edison.
23 Q. And where is it located?

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1 A. They closed their -- they are
2 no longer in this area.
3 Q. Okay.
4 A. As far as a branch office.
5 Q. Are they still in business
6 now?
7 A. I have no idea.
8 Q. So, you were an employee for
9 them?
10 A. I was a salesman.
11 Q. And did you at the same time
12 have your own security company, as well?
13 A. No, I did not.
14 Q. So, you -- did you resign from
15 Edison to start your own company?
16 A. No, sir, they closed the
17 office, and after that is when I opened
18 Security Experts.
19 Q. Did your wife also work for
20 Edison Security or not?
21 A. No, sir, she did not work for
22 Edison Security.
23 Q. What was she doing at this

23 (Pages 89 to 92)

Page 93

Page 95

1 period?

2 A. I don't know.

3 Q. Also I see some income from an
4 entity on here called Best Security
5 Systems, Inc. of \$1,587?

6 A. Right. That was another
7 independently-owned security company here
8 in Montgomery.

9 Q. And who worked for them, you
10 or your wife?

11 A. Actually when Edison shut
12 down, I went to work for Best for a very
13 short period of time, then I opened -- I
14 just -- yeah, that's what I was trying to
15 think. And then David and I opened the
16 Security Experts.

17 Q. What about the other company
18 that you mentioned previously, was there
19 any income from that reported this year?

20 A. In 2000?

21 Q. Yes.

22 A. No, that was before 2000.

23 Apparently it was before.

1 or --

2 A. Yeah, cold calling.

3 Q. In 2000, we also see a little
4 bit of income, I think, from Capital
5 Chevrolet, wages and salary report?

6 A. Yeah, it was for a short
7 period of time I was with those guys as a
8 salesman.

9 Q. Selling cars?

10 A. Yes.

11 Q. New cars, used cars?

12 A. Yes.

13 Q. Both?

14 A. Yes.

15 Q. And then there's also a
16 reference to Osiris, O-S-I-R-I-S, Holding
17 Company on the wages and salary report?

18 A. I don't have a clue to what
19 that is.

20 Q. Okay. Do you own an
21 automobile at this time?

22 A. Yes, I do.

23 Q. Does your wife own one as

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Page 96

1 Q. All right. I don't see any
2 income from Regions at this juncture
3 either as of 2000, so she must have
4 resigned from Regions before that as
5 well?

6 A. Yes.

7 Q. Have you ever been arrested
8 for anything?

9 A. No, sir.

10 Q. Not as a child or minor?

11 A. No.

12 Q. Have you ever had any kind of
13 a misdemeanor charge --

14 A. No, sir.

15 Q. -- or any kind of criminal
16 charge against you?

17 A. No, sir.

18 Q. -- of any kind? Say again.

19 A. No, sir.

20 Q. What did you do at Best
21 Security Systems in 2000?

22 A. I was a sales rep.

23 Q. And was that cold calling

1 well?

2 A. Yes, we did. Yes, she does.

3 Q. Do y'all own them together?

4 A. Yes, we do.

5 Q. What are they, make, model,
6 year?

7 A. I've got a -- she's got a 2000
8 Mazda Miata. I have a '93 Nissan Sentra
9 that I use for work.

10 Q. Yes.

11 A. And I have a 1990 Toyota, a
12 four-wheel-drive.

13 Q. As a part of the initial
14 disclosures that the court required be
15 produced in this case and that were
16 produced by your counsel last year, we
17 had -- we received some tapes. We had
18 those tapes transcribed by a court
19 reporter.

20 A. Right.

21 Q. And last week we sent the
22 transcript to your counsel and basically
23 asked that you have a look at them and

24 (Pages 93 to 96)

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Page 99

1 let us know if you thought they were
2 accurately transcribed or not. Have you
3 done that?

4 A. I have looked at them.

5 Q. Okay. Let me ask you to take
6 a look at --

7 MR. PARKER: It should be
8 Exhibit --

9 MR. NELMS: M.

10 MR. PARKER: M and O.

11 Q. Let me ask you to take a look
12 at Exhibit O first of all.

13 (Whereupon, Defendant's
14 Exhibit O was marked for
15 identification.)

16 A. Okay.

17 Q. And I'm going to ask you --
18 and that's -- it has on the cover phone
19 conversations, Charlie Thornton slash
20 FedEx. It has an index which I know is
21 not something that you created. That's
22 something that the court reporter
23 created, and it has a series of names of

1 transcript with it.

2 Q. Okay.

3 A. So --

4 Q. All right. Did you see
5 anything from your own recollection of
6 the tapes in reading through the
7 transcripts that you thought was
8 inaccurate?

9 A. There again, I can't say. You
10 know --

11 Q. Why can't you answer that
12 question?

13 A. Because if I read something --
14 I mean, I'm reading this and knowing
15 what's coming off the tape may be worded
16 differently, I -- I cannot say with
17 100 percent accuracy that it is exactly
18 the way it came off the tape because I
19 did not take the tape, listen to the tape
20 and read the transcript at the same time.

21 Q. You already told me that.
22 What I'm asking you is, based on reading
23 the transcript, did you see anything in

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Page 100

1 people --

2 MR. PARKER: I don't think
3 that their exhibits have an index.

4 A. I don't have that.

5 MR. PARKER: The ones, the
6 court reporters and theirs, they just
7 start at the first page.

8 Q. Okay. Sorry. Okay. In any
9 case, Exhibit O, according to the court
10 reporter who listened to the tapes, is a
11 true and correct transcription of what's
12 on the tapes. My question to you is,
13 having read and reviewed these tapes and
14 having made the tapes and having reviewed
15 these transcripts, do you have any
16 quarrel with the accuracy of what is in
17 front of you as Exhibit O?

18 A. I have not been able to
19 compare apples to apples as far as
20 reading the total accuracy of the
21 documents here. I cannot say they are
22 100 percent accurate because I did not
23 listen to the tape and then read the

1 it, based on your own participation in
2 these conversations, that you thought was
3 wrong? That's my question.

4 A. No.

5 Q. Did you make any recordings of
6 any conversations with any FedEx
7 employees other than those that are
8 reflected in the transcripts in front of
9 you as Exhibit O?

10 A. No, sir.

11 Q. It's true, is it not, that you
12 did not tell any of the people whose
13 conversations you recorded as shown in
14 Exhibit O that you were recording the
15 conversations?

16 A. That is true.

17 Q. So, none of these people that
18 you were talking to, as reflected on
19 Exhibit O, had any reason to know that
20 you were recording the conversations
21 because you didn't tell them that you
22 were recording them?

23 A. I did not tell the individuals

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1 that I was recording, no.
2 **Q.** It's true, though, that you
3 had a number of conversations with FedEx
4 employees that you did not record,
5 correct?
6 **A.** Prior to me recording these,
7 not after I started recording. Every
8 conversation after the fact was recorded.
9 **Q.** And when did you make your
10 first recording, what date?
11 **A.** I do not recall that date.
12 **Q.** Was it May the 19th?
13 **A.** I do not recall the date.
14 **Q.** Okay. I think we're going to
15 be able to figure that out, but we'll get
16 to that.
17 But your testimony is whatever
18 the earliest date is that we have -- for
19 which we have a recorded conversation,
20 from that point forward, every
21 communication you had with FedEx or with
22 Mr. Primus at the bank was recorded by
23 you?

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1 **A.** Yes, sir.
2 **MR. NELMS:** Excuse me. Every
3 telephone conversation.
4 **A.** Yes, telephone.
5 **Q.** Okay. You had other
6 conversations not on the phone with
7 people that were not recorded.
8 **A.** No, sir.
9 **Q.** Okay. Well, that's what I'm
10 trying to figure out.
11 **A.** Okay. No, sir, I did not.
12 **Q.** So, whatever the earliest date
13 is where we -- where you recorded a
14 conversation, you had no communications
15 with FedEx, anybody at FedEx, other than
16 one that was actually recorded?
17 **A.** That's correct.
18 **Q.** And you knew you were calling
19 some people in Pittsburgh, Pennsylvania,
20 correct?
21 **A.** That's exactly right.
22 **Q.** Are you aware, as you --
23 **A.** Well, let me back up. The

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1 phone numbers -- I talked to one
2 individual that was in Honolulu, Hawaii.
3 **Q.** Yes.
4 **A.** And I did not know I was
5 calling Honolulu, Hawaii.
6 **Q.** But you know that you made
7 several telephone calls to people in
8 Pittsburgh, Pennsylvania, correct?
9 **A.** I made phone calls to
10 Pittsburgh, Pennsylvania.
11 **Q.** And you recorded the calls?
12 **A.** Yes, I did.
13 **Q.** Are you aware, as you sit here
14 today, that it is a crime under
15 Pennsylvania law to record a conversation
16 and not tell the other person you're
17 recording it?
18 **A.** I was not aware of that. I
19 was making the phone call from the State
20 of Alabama. They did not call me.
21 **Q.** Okay. Are you aware of that
22 now?
23 **A.** If you're making me aware of

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1 it.
2 **Q.** You've not heard that before
3 today?
4 **A.** No, sir, I have not.
5 **MR. NELMS:** Hang on a minute.
6 You and I talked about it.
7 **A.** What?
8 **MR. SPOTSWOOD:** I didn't mean
9 to inquire into your communications.
10 **MR. NELMS:** I know, but if
11 you're not telling him about the
12 conversations that you and I have had, I
13 waive any attorney-client privilege.
14 We --
15 **A.** Oh, we've talked, sure.
16 **MR. NELMS:** All right. Did
17 I --
18 **A.** I thought he was talking about
19 FedEx.
20 **MR. NELMS:** Well, y'all be
21 clear.
22 **Q.** (BY MR. SPOTSWOOD:) You've
23 just revealed, I guess, that you did have

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1 some communications with your counsel
2 about that issue. I don't mean to
3 inquire into those, but you did discuss
4 those issues, correct?

5 MR. NELMS: Right. I waive
6 any privilege. Do you wish to waive any
7 privilege that we might have related to
8 this specific issue of whether or not you
9 were aware, of course, after the fact
10 that it is a crime in Pennsylvania to
11 record conversations without letting the
12 party being recorded know that, in fact,
13 they are being recorded? Do you waive
14 that part of the attorney-client
15 privilege?

16 A. Sure.

17 MR. NELMS: It's your
18 privilege, not mine.

19 A. I mean, I don't really -- I
20 mean, I'm wanting to understand what
21 you're saying to me.

22 Q. (BY MR. SPOTSWOOD:) Well, let
23 me just ask it this way.

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1 A. Okay.

2 Q. Before you talked with your
3 counsel, did you have any idea or
4 knowledge of what the law was in
5 Pennsylvania about recording
6 conversations?

7 A. No, sir, I did not.

8 MR. NELMS: There you go.

9 Q. When you recorded these
10 conversations, did you record all the
11 conversation or some of it?

12 A. All the conversation.

13 Q. What kind of equipment did you
14 use to do that?

15 A. Just a hand -- a hand-held
16 recorder off of a speaker phone, my home
17 phone.

18 Can I take a moment? I need
19 to run to the restroom.

20 MR. SPOTSWOOD: Absolutely.
21 (Said deposition was in recess
22 at 11:32 a.m. until 11:39
23 a.m., after which the

1 following occurred:)

2 Q. (BY MR. SPOTSWOOD:) On
3 Exhibit O, and I know you guys don't have
4 this -- what's our last exhibit?

5 (Whereupon, Defendant's
6 Exhibit R was marked for
7 identification.)

8 Q. We'll take a look at this in a
9 second. This is the index that the court
10 reporter did that apparently is not on
11 your -- on your page. It says here,
12 "These conversations were transcribed in
13 the order listed above just as they were
14 recorded on the audiotapes." And my
15 question to you is from -- can you
16 confirm that these are listed here in
17 date order? In other words, the first --

18 A. No, sir, I can't confirm it.
19 There's no way I can confirm it unless I
20 listen to the tape and heard the dates
21 themselves, but I can't accurately --

22 Q. Well, I don't believe, with
23 one or two exceptions, that there are

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1 dates stated on the transcripts.

2 A. Well, I -- I remember after I
3 said the date on the -- on the tape. I'm
4 not saying I did it on each and every one
5 of them, but I can recall doing that.

6 Q. I recall one instance where
7 you did, too, and that's what I'm looking
8 for right here to see if I can find it.
9 I read through these, I'll tell you, very
10 recently.

11 A. Yeah, I noticed one of them.
12 But I know there was more than one
13 occasion that I actually put the date on
14 there.

15 Q. Here we go. On page 21, that
16 is the first reference I see to a date,
17 and it says -- and page 21 is after
18 your -- the recordings of the
19 conversations of Jeff White, Kent
20 Gastineau and then again Kent Gastineau.
21 And on page 21 it says these calls were
22 made on May 19th '05. Do you see that?

23 A. Yes, sir.

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1 Q. And, so, would that be your
2 best recollection that that's when those
3 calls were made, preceding from page one
4 to page 21?

5 A. I cannot say with 100 percent
6 accuracy that all of these calls were
7 made on the 19th. Apparently the one
8 that I spoke to, Angela --

9 Q. Yes?

10 A. -- what it's saying to me
11 now --

12 Q. You're the one recording these
13 calls.

14 A. -- is that this -- this call
15 was made on the 19th.

16 Q. Can you explain why it says
17 calls, plural?

18 A. No, I cannot explain that. I
19 did not -- I did not do this
20 transcription.

21 Q. Well, I understand that, but I
22 can -- I can assure you this was done by
23 a very competent professional.

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1 A. I don't even question that. I
2 don't question that.

3 MR. NELMS: Object to the
4 form.

5 A. What --

6 Q. I'm really kind of struggling
7 with here is, I mean, why are you having
8 a hard time figuring this out. These are
9 very straightforward questions here.
10 We've got a phone call to Jeff White, you
11 know, you -- you're trying to find him.
12 You don't have any success. That's pages
13 one through three, and then starting on
14 page four, which really kind of goes --
15 goes in sequence here. When you called
16 Jeff White, whom you didn't get, he told
17 this person Cheryl to tell you to call
18 Kent, so that's what you do, you call
19 Kent.

20 A. Okay.

21 Q. And then you have this
22 conversation with Kent apparently as
23 recorded here.

1 MR. NELMS: Bob, is there a
2 question in here?

3 MR. SPOTSWOOD: Yeah, I'm
4 going to get to it.

5 MR. NELMS: Well, I'm going to
6 object to characterizations of the
7 deponent's willingness or ability to
8 answer the question. He's answering them
9 as you're asking them. Characterizations
10 otherwise are really not your province.

11 Q. Well, I -- my question is very
12 simple. Why can't you confirm for me
13 with this transcript in front of you that
14 these calls, just as it says here on page
15 19, were made -- I'm sorry, page 22, were
16 made on the 19th of May?

17 MR. NELMS: I object to the
18 form again because it's asked and
19 answered.

20 MR. SPOTSWOOD: Well, it
21 hasn't been asked and answered after he's
22 just had a chance to look through what
23 we're talking about, and that's what I'm

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1 asking you to do, and if you need to read
2 the first 22 pages here --

3 A. I have read those.

4 Q. Okay. Now, my question to you
5 is isn't it true that the calls that
6 precede page 21 were made on the 19th of
7 May just like you say they were?

8 A. I cannot confirm that. I
9 cannot. And I am being honest. I cannot
10 confirm that.

11 Q. Okay. What calls do you think
12 you were talking about near then? Do we
13 need to get the tape recorder out and
14 listen to the tapes?

15 MR. NELMS: Object to the
16 form. Just try to answer his question
17 the best you can.

18 A. I cannot confirm that, Bob.
19 I'm sorry.

20 MR. NELMS: Why don't you ask
21 him what his impression is?

22 Q. I'm glad to do that. Is it
23 your best impression that these three

28 (Pages 109 to 112)

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calls were made on the 19th?

A. As far as looking at this particular document --

Q. Yeah.

A. -- the impression that this document gives me that these calls were made. As far as me knowing they were made, I cannot confirm that.

Q. Okay.

MR. NELMS: Let's take a break.

MR. SPOTSWOOD: Okay. Thank you.

MR. NELMS: Am I --

MR. SPOTSWOOD: No, go ahead. (Said deposition was in recess at 11:46 a.m. until 11:49 a.m., after which the following occurred:)

Q. (BY **MR. SPOTSWOOD:**) Let's turn to Exhibit N for a minute. (Whereupon, Defendant's Exhibit N was marked for

MR. PARKER: I believe it's on the last page.

Q. Yes, it is, on page 53, it says, "Today is the 19th, and that's all I have for today, so I'll end this conversation now."

So, would it be your best judgment that this would have been recorded by you on the 19th of May?

A. Yes, sir.

Q. Of 2005?

A. Yes, sir.

Q. Okay. And my recollection is you filed this lawsuit on May the 25th of 2005?

A. I don't recall the date.

Q. Is this the first time that you had recorded conversations with persons without advising them that you were doing so?

A. Yes, sir, it is.

Q. And have you done it since this time?

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identification.)

Q. Do you have that in front of you?

A. Yes, sir, I do.

Q. This is a transcript of a tape that we received from your counsel as a part of the initial disclosures in the case, and it purports to be a statement that you dictated. Does this, in fact, appear to be a statement that you dictated into the tape recorder?

A. Yes, sir.

Q. Did you see, in reviewing this transcript, any errors that were noticeable to you, recognizing that you haven't done a word-by-word transcript versus tape comparison?

A. No, sir.

Q. I know that when I originally read through this that I wrote on the cover of it May 19th, and I suspect I did that because somewhere in here it says the date you recorded it.

A. No, sir.

Q. According to your amended complaint, your first introduction to FedEx Ground came when you read a newspaper advertisement for an information session about FedEx Ground independent contractor positions, is that correct?

A. That's correct.

Q. What paper did you see this ad in?

A. The Montgomery Advertiser.

Q. Do you recall what the ad said?

A. No, sir, I do not recall it verbatim.

Q. You don't have a copy of it, do you?

A. No, sir, I don't.

MR. NELMS: I'm sorry, a copy of the ad?

MR. SPOTSWOOD: Yes.

MR. NELMS: Yeah, it was in

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1 the initial disclosures.
2 **A.** We had several copies.
3 MR. NELMS: If it's not, I'll
4 give it to you now.
5 MR. PARKER: I don't think we
6 got it.
7 MR. NELMS: I've got it.
8 Sorry.
9 MR. PARKER: We had a list of
10 documents.
11 MR. NELMS: This is the
12 original. We can put it in the record.
13 Find it for me, please.
14 **A.** What.
15 MR. NELMS: I forget what
16 it -- is that it (indicating)? No.
17 **A.** (Examining document.)
18 MR. NELMS: It may not be on
19 that page. It may be on the other page.
20 **A.** Here it is right here. That's
21 it, independent contractors which were --
22 no, this is for June.
23 MR. NELMS: This is --

1 on it.
2 (Said deposition was in recess
3 at 11:54 a.m. until 11:57
4 a.m., after which the
5 following occurred:)
6 (Whereupon, Defendant's
7 Exhibits S and T were marked
8 for identification.)
9 **Q.** All right. Have a look here,
10 if you would, at Defendant's Exhibit S.
11 This is a copy of a classified ad from
12 the paper June the 12th, 2005.
13 MR. SPOTSWOOD: And, Counsel,
14 if I understand you correctly, this came
15 from The Montgomery Advertiser, is that
16 correct?
17 MR. NELMS: Yes.
18 **Q.** And is this similar to the ad
19 that you saw back in January?
20 **A.** This is the exact ad except
21 for the dates when the sessions would be.
22 MR. NELMS: I want to put that
23 in.

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1 **A.** This is where they was, you
2 know, keeping on advertising. This is
3 the June paper, but we had a -- I went --
4 MR. NELMS: Point to it for
5 me.
6 **A.** It's right here.
7 MR. NELMS: All right.
8 **A.** That's the same ad.
9 MR. SPOTSWOOD: Do you want --
10 can we get somebody to take a picture of
11 that?
12 MR. NELMS: Yeah, do you want
13 me to copy that front page? We've got
14 whatever our -- where did it go?
15 MR. PARKER: What are you
16 looking for?
17 MR. GASTINEAU: A copy of this
18 right here.
19 MR. NELMS: Oh, all right.
20 You already got a copy. One second.
21 MR. SPOTSWOOD: And be sure
22 you get me a date on that, too, if you
23 can arrange to copy it so it has a date

1 **Q.** Do you have -- hang on a
2 second.
3 (Off-the-record discussion.)
4 **Q.** (BY MR. SPOTSWOOD:) Do you or
5 your counsel -- I will ask you both this:
6 Is this the only ad like this that y'all
7 have?
8 MR. NELMS: Charlie says that
9 he went and copied some more.
10 **A.** I did not copy them. I went
11 to the -- to the library, and I went back
12 in the archives of the newspaper and
13 brought the originals. I cut the
14 original out and brought them in.
15 MR. NELMS: To me?
16 **A.** Yes, brought them to the
17 office, gave them to Audrey.
18 MR. NELMS: I will get them
19 for you when I can find them. I don't
20 see them in my file.
21 **A.** Because there were times in
22 between January and May the ad was still
23 being run, so I got from January all the

30 (Pages 117 to 120)

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1 way through May and above -- beyond, and
2 I brought them in and gave them to
3 Audrey.

4 MR. SPOTSWOOD: And Audrey is
5 an employee here in the firm?

6 MR. NELMS: Yes, secretary.

7 MR. SPOTSWOOD: Okay.

8 Q. (BY MR. SPOTSWOOD:) Going
9 back to our discussions for just a
10 minute --

11 MR. NELMS: Keep going, Bob.

12 Q. -- we've -- you -- you have
13 testified, if I remember it correctly,
14 that you did not record all of your
15 conversations with Kent Gastineau or
16 other employees because some of those
17 conversations either were in person, and
18 you recorded none of those, right, so
19 far?

20 A. Let me say this: I had no
21 conversations with anybody face-to-face
22 after I recorded -- started the
23 recordings on the telephone.

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1 Q. Okay.

2 A. Before that there was no
3 recordings --

4 Q. All right.

5 A. -- either on the phone, you
6 know, or off, face-to-face.

7 Q. All right. Why did you think
8 it was appropriate to record
9 conversations with these individuals who
10 you recorded?

11 MR. NELMS: Object to the
12 form. Answer the question.

13 A. Oh, okay. I'm sorry. Because
14 I had prepared myself to go to work. I
15 had put myself out on a limb. I had put
16 myself in a position where I really
17 thought I had an excellent, excellent
18 opportunity to go to work for -- to go to
19 work for an excellent company, and the
20 night -- the night before I was to get
21 into that truck and start my job, Kent
22 calls me and tells me I cannot go to
23 work, that he had signed off on some

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1 documents and signed in the wrong place
2 and was going to have to have them
3 documents e-mailed back to him before I
4 could go to work. And I had put my
5 livelihood on the line, my credit on the
6 line, and I had a \$50,000 vehicle sitting
7 in my driveway with FedEx all over it,
8 and uniforms to this day that are hanging
9 in my closet to go to work. And I wanted
10 to know what was going on, and if I,
11 Charlie Thornton, did not prepare myself
12 or get my ducks in line, nobody else was
13 going to do it for me. And I had to have
14 proof of what -- what was going down
15 because I was in a really, really bad
16 situation. I had a truck sitting out
17 there that had a seven hundred and
18 something dollar payment on it that was
19 due in two weeks and had no -- no job.
20 My livelihood, my wife, my family was on
21 the line.

22 Now, I'm just answering it
23 truthfully, Bob, truthfully. And I had

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1 been given the run-around for so long, I
2 had to protect myself.

3 Q. And why did you record your
4 history that's reflected in Exhibit N?

5 A. Because it was the best way at
6 the time for me to bring it back in my
7 mind and record it on tape other than
8 writing it down.

9 Q. Okay.

10 A. I could think and talk at the
11 same time and put it down. It would be
12 more accurate this way than writing it.

13 Q. Is it fair to say that by the
14 time you started recording these
15 conversations that you decided that you
16 were going to sue FedEx?

17 A. No, sir. It was not. It was
18 not. But I wanted to -- I wanted to have
19 something that I could hold somebody to.
20 Kent had called me, and he had asked me
21 how many years I wanted on the contract.
22 I wanted two years. He was taking care
23 of it. I trusted the man. I trusted

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1 everybody in FedEx from the trainer I
2 went and trained with in Birmingham to
3 everybody. I was excited because I was
4 not just looking for this for myself. I
5 was looking at it for four boys down the
6 road because I had investigated this, my
7 wife and myself, and I knew that it could
8 possibly be a future for my -- my boys
9 down the road. And, no, I did not. I
10 did not have, when I started recording
11 this, intentions on suing anybody. My
12 intentions were to have a job.

13 Q. Six days later you filed a
14 lawsuit?

15 A. Six -- six days. How long
16 does it take you to make up your mind?

17 MR. NELMS: Just answer the
18 question.

19 A. I knew -- yes, six days later.

20 MR. NELMS: If that was a
21 question.

22 MR. SPOTSWOOD: It was a
23 question.

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1 Q. (BY MR. SPOTSWOOD:) Did your
2 wife attend the sessions that you
3 attended, which I think from some -- let
4 me break this question down.

5 When did you attend the
6 informational session about becoming a
7 driver, contractor?

8 A. January.

9 Q. Does January 4 stick with you?

10 A. I cannot recall the date, but
11 it was in January. I believe it was on a
12 Thursday.

13 Q. Okay. Did anybody attend with
14 you, your wife?

15 A. Yes, my wife. And she's a
16 sharp lady, I can tell you.

17 MR. NELMS: Answer his
18 questions.

19 Q. Do you know whether either you
20 or she made any notes of any kind in
21 connection with this?

22 A. Yes, I did.

23 Q. Where are those note?

1 A. I gave those notes to Andy.

2 MR. SPOTSWOOD: I'm supposed
3 to have that. I mean, we have asked it
4 every which way known to man for any
5 documents he has related to any of this.
6 We don't have them.

7 MR. NELMS: Off the record if
8 that's all right with you.

9 MR. SPOTSWOOD: Yes.
10 (Off-the-record discussion.)
11 (Said deposition was in recess
12 at 12:06 p.m. until 12:38
13 p.m., after which the
14 following occurred:)

15 (Whereupon, Defendant's
16 Exhibit U was marked for
17 identification.)

18 MR. SPOTSWOOD: I am putting
19 this U on a blank part of this piece of
20 paper here.

21 MR. NELMS: Understood.
22 (Off-the-record discussion.)

23 Q. (BY MR. SPOTSWOOD:) Mr.

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1 Thornton --

2 A. Yes, sir.

3 Q. -- I'm going to show you what
4 I've marked as Defendant's Exhibit U,
5 which is a two-page -- it's front and
6 back, got writing on the front and back.

7 A. Yes.

8 Q. These are notes of yours, are
9 they not?

10 A. Yes, sir, they are.

11 Q. And is everything on these two
12 pages in your handwriting?

13 A. Yes, sir, it is. Okay.

14 Except -- I'm sorry. Let me back up.
15 Except for -- except for one at the
16 bottom of the first page here, you see
17 the little star that says what areas are
18 open.

19 Q. Yes.

20 A. My wife wrote that.

21 Q. All right. And -- okay.

22 A. And if you see out to the
23 side, I asked that question. It says

32 (Pages 125 to 128)

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1 Montgomery, Troy and Wetumpka, Elmore.

2 Q. Yes.

3 A. And that was the response --
4 that was a response from Stan.

5 Q. All right. Where did this
6 session with Stan take place?

7 A. The Holiday Inn 85 in
8 Montgomery.

9 Q. And who else presented
10 information about the company other than
11 Stan?

12 A. No one.

13 Q. How many people were in
14 attendance?

15 A. I do -- I really don't recall.
16 There was probably seven to ten people
17 there.

18 Q. What do you recall, whether
19 you look at these notes or not, that Stan
20 said about the job itself?

21 A. Well, I recall it's pretty
22 much been embedded in my mind. I recall
23 everything he actually said. He went

1 being an independent contractor?

2 A. Yes, sir.

3 Q. Is that what the job was
4 described as?

5 A. Yes. He said that -- well, he
6 told us that he was the ground manager,
7 but he was pretty much running both
8 ground and home delivery and that the --

9 Q. This was a seminar for
10 becoming a -- or a presentation or an
11 information session about becoming a home
12 delivery, independent contractor driver?

13 A. Yes, sir. Yes, sir.

14 Q. Did he describe the contract
15 that the independent contractors would
16 have to sign?

17 A. He did not get into the
18 contractor.

19 Q. Did he tell you, though, you'd
20 have to sign a written contract?

21 A. He did not say that.

22 Q. Okay. You understood that
23 later, I guess, when you saw that book

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1 into the presentation, and everybody left
2 except my wife and one other individual.
3 It was a gentleman.

4 Q. When you say they left, you
5 mean in the middle of the presentation,
6 at the end of the presentation?

7 A. At the end of the
8 presentation.

9 Q. Okay.

10 A. And, so, we at that time was
11 asking him questions, and --

12 Q. What was his presentation
13 basically? What was the substance of
14 what he provided to you at the
15 presentation?

16 A. Well, the substance of the
17 presentation was that they were in need
18 of contractors and he described the job,
19 how hard the job would be. He described
20 the pay of the job, the training, and
21 that you had to be able to secure
22 financing on a delivery type vehicle.

23 Q. Did he say anything about

1 we've been passing around here?

2 MR. NELMS: Object to the
3 form.

4 A. Does that mean answer?

5 Q. Yes.

6 A. This is new to me. I don't
7 know. I signed so many different
8 documents while I was there. I was under
9 the assumption that I had signed off to
10 be a contractor because the phone call
11 that I received from Kent asking me about
12 the one- or two-year contract, I asked
13 him to explain it to me, and he just said
14 it's either a one- or two-year. They
15 review your performance, and -- and, you
16 know, it's based on that. I said
17 definitely I want two years.

18 (Off-the-record discussion.)

19 Q. (BY MR. SPOTSWOOD:) Let me go
20 ahead and mark that. This is marked as
21 Defendant's Exhibit V.

22 (Whereupon, Defendant's
23 Exhibit V was marked for

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identification.)

Q. This is, I'll state for the record, a document that your counsel produced to us today. It's called P & D Contractor Business Guide. It has a number up on the top of the first page, 06789 P 149 RES, and it has on the inside a this week fuel supplement page that's dated 3/22, and then it's hard to tell what year of 2000 it is, because it's cut off. And, then, it has a -- starts with FedEx home delivery standard contractor operating agreement. Then it has a table of contents, agreement, leased equipment, various attachments. When did you receive this book?

A. As far as the date, I'm not sure. I can't recall the date when I received it. It was in -- well, I just don't recall the date. It was before I received the truck.

Q. It was before you received the truck?

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A. Yes, sir.

Q. Was it in -- as early as February that you saw that?

A. I do not recall.

Q. Do you recall whether it was immediately before you received the truck?

A. I do not recall.

Q. Just before you received the truck?

A. I know -- I know that I received it before I received my truck.

Q. Okay. Let me, if I may, Counsel, unless you need it, let me call your attention to the agreement in here which is in the second tab, a standard contractor operating agreement. Did you read this document?

A. Yes, I have.

Q. You did?

A. Yes, I have.

Q. And when we get over here to the end of this document, there is a

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page -- on page 29, there is a signature line for FedEx Home Delivery, and there is a contractor line, and it asks for signature, typed name, witness. Did you ever sign a contract like this?

A. Like I said earlier, I signed so many documents, I do not -- I do not know if it was that document or not.

Q. All right. So, as we sit here today, and I can assure you that --

A. I was told that this document here was for me to keep.

Q. All right. Who told you that?

A. Kent.

Q. What I'm -- what I can tell you is that your lawyers have not produced a signed contract for me, okay? And I take it you never provided one to them?

A. I gave Andy everything I have.

Q. All right. And I can tell you that our files do not reflect a signed contract from you. And your testimony

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today is you can't really remember signing a contract like this?

A. I signed so many documents I do not -- I do not recall what documents I actually signed. But I do know that Kent called me and told me he was putting me in for two years.

MR. NELMS: Just answer his questions.

A. Okay.

Q. And that that was the contract that he was going to request for you, he was going to request a contract for two years?

MR. NELMS: Object to the form.

A. He never --

Q. Sir?

A. He never said that to me. He didn't ever --

Q. Well, what does it mean to you when he said he was going to put in for two years? Doesn't that mean request a

34 (Pages 133 to 136)

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1 two-year contract for you? Are you
2 trying to tell me something else?
3 A. No, I'm telling you that the
4 phone conversation was he was signing me
5 up for two years.
6 Q. All right.
7 A. And he was submitting it --
8 submitting it.
9 Q. All right.
10 A. There was never a request.
11 Q. Oh, you never requested a
12 two-year contract?
13 A. No.
14 MR. NELMS: Object to the
15 form.
16 Q. You didn't?
17 MR. NELMS: Answer his
18 question, if you can.
19 Q. You didn't?
20 A. What?
21 MR. NELMS: Answer his
22 question if you can.
23 A. Pardon me, re --

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1 Q. You didn't respond to his
2 inquiry about one or two years with a
3 request for a two-year contract?
4 A. I -- what I asked him on the
5 phone was what does the -- what does the
6 one- or two-year contract mean because I
7 was going to be a long-term employee, and
8 he explained it to me this way: FedEx
9 has the right to renew it. It's
10 according to the way you perform in the
11 field. You keep your maintenance up on
12 your truck and keep your -- keep yourself
13 in line with FedEx rules and regulations.
14 I said two years because I -- hey, I'm
15 not going anywhere.
16 Q. But you don't view that as
17 requesting a two-year contract?
18 MR. NELMS: Object to the
19 form.
20 A. No, I do not.
21 Q. Okay.
22 A. He asked me --
23 Q. One-year or two-year and you

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1 said I'd like a two-year, right? It's
2 not hard.
3 A. Right.
4 Q. All right. I know that -- Mr.
5 Thornton, I know that a lot of different
6 things happened that we're going to talk
7 about during the course of this three- or
8 four-month period, and I will tell you
9 that one of the things I really think
10 would be helpful for both of us is that
11 if we try to do this sort of over a time
12 line, so that's what I'm going to try to
13 do. I just want you to know where I'm
14 going.
15 On this sheet, Defendant's
16 Exhibit U here, if I may, can I look at
17 your original --
18 A. Yes.
19 Q. -- because I noticed that
20 there was a little yellow highlighter on
21 the original for W-E-P-T Elmore, which I
22 assume means Wetumpka?
23 A. Yes.

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1 Q. Okay. Why is there this
2 highlighter there?
3 A. No, I have no idea why it's on
4 there.
5 Q. No significance to you?
6 A. No.
7 Q. There's also a question mark
8 by Troy.
9 A. Right.
10 Q. What's the significance of
11 that if you can recall?
12 A. I was told at the time that
13 they had someone that possibly -- would
14 possibly be taking that route over, but
15 it wasn't for sure.
16 Q. Okay. And the specific
17 question that your wife asked, I take it,
18 since you said this is her handwriting in
19 brackets, what areas are open, that was a
20 question that you asked or that she
21 asked?
22 A. She wanted me to ask.
23 Q. And you asked it --

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1 A. Yes, sir, I did.
2 Q. -- to Stan? Was that at the
3 conclusion of the session when most
4 everybody else had left?
5 A. Yes.
6 Q. And then you wrote down his
7 response?
8 A. Yes, sir, I did.
9 Q. Montgomery, maybe Troy, I
10 guess, question mark, Troy and Wetumpka,
11 Elmore?
12 A. That's correct.
13 Q. Okay. Up at the top here you
14 marked down Joe McDonald, Thursday.
15 What's the significance of that?
16 A. Joe McDonald was the -- well,
17 Thursday actually is the date that the
18 meeting was held, the session.
19 Q. Yes.
20 A. Joe McDonald, he was the
21 terminal manager --
22 Q. Yes.
23 A. -- in Birmingham, and that's

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1 who I was to report to for training.
2 Q. And there's a number listed
3 there. Is that Stan Trott's number,
4 277-0030?
5 A. Yes, sir.
6 Q. And we have another number
7 here listed 395-8387 and underneath that
8 dock. What is that?
9 A. I do not recall that number.
10 I know it has something to do with FedEx.
11 It may be a phone number out on the dock.
12 I don't -- I can't remember.
13 Q. All right. And you had on the
14 line right next to dock, it says 50,000
15 and then 75,000 year income.
16 A. Right.
17 Q. So, that means a range of
18 income 50,000 to 75,000, is that what
19 that meant to you?
20 A. Yes.
21 Q. And then it says truck average
22 35,000 per year cost?
23 A. Right.

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1 Q. Okay. And then there's a
2 462-4690 phone number. What's that
3 number, if you remember?
4 A. I don't -- I don't -- I don't
5 recall. I don't know what that number
6 is.
7 Q. All right. And the next item
8 here is eight-day course, you pay. What
9 does that mean?
10 A. The course in Birmingham was
11 eight days, and --
12 Q. What was that course for?
13 A. It was for training. It was
14 for Smith driver training. It was for
15 the hand-held scanner training. It was
16 with -- taught by Omar Newman.
17 Q. And was that -- when you say
18 you pay, what does that mean?
19 A. Well, it was -- we was -- we
20 was asking questions about whether to
21 stay there in Birmingham in a motel or
22 come -- drive back, and he said, well, if
23 you elect to stay, you'll pay. You'll

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1 pay for the room.
2 Q. You were paid for the training
3 time, I take it --
4 A. Yes, sir.
5 Q. -- in this course? And then
6 there's a bracketed benefits, you pay.
7 What does that mean?
8 A. Okay. That is your benefits
9 as far as your insurance, your
10 responsibility for your own medical
11 insurance.
12 Q. As an independent contractor,
13 you pay for all of that stuff on your
14 own?
15 A. Yes, sir. Yes, sir.
16 Q. All right. And then we have
17 Gastineau, Kent, his phone number.
18 390-0480, is that what that means?
19 A. That's correct.
20 Q. And then there's a straight
21 line down the middle of the page there,
22 and to the right of it it says starting
23 time and then three-week month. What

36 (Pages 141 to 144)

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1 does all that mean?
2 **A.** The question I asked Stan was
3 once you complete your training in
4 Birmingham and you come out, you've got
5 to drive to the terminal, and how long
6 does that actually take before you're
7 assigned and you're out on the road
8 working. He said three weeks to a month.
9 **Q.** And then the next line is a
10 van number?
11 **A.** That was the number they
12 issued me on my van.
13 **Q.** Okay. Well, that -- what I'm
14 trying to figure out, I guess, from this
15 page in part, is that is obviously
16 something you didn't write down on the
17 day of this meeting?
18 **A.** No, sir. You're right.
19 **Q.** That's something you wrote
20 down later when you knew that?
21 **A.** Right.
22 **Q.** Okay. And then the next item
23 here we've got to the left of the three

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1 months -- three week month entry, I see
2 S --
3 **A.** That's State Farm.
4 **Q.** -- Farm.
5 **A.** That was the phone number to
6 my wife.
7 **Q.** And then Jeff White, a 404
8 number?
9 **A.** Yes, sir. That was --
10 **Q.** Is that something written down
11 later?
12 **A.** Yes, sir. It actually was.
13 That was the number to Kent's boss or
14 Stan's boss.
15 **Q.** Whom you called much later in
16 the process?
17 **A.** Yes.
18 **Q.** And then below that we have
19 Tuesday, hyphen, 6 p.m., ground second
20 front on right; what does that mean?
21 **A.** That was when I was to report
22 at the terminal here in Montgomery. It
23 says 6 o'clock in the morning, and that

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1 was just which door to go in.
2 **Q.** 6 p.m. at night it looks like,
3 is 6 p.m. right?
4 **A.** Well, it was actually in the
5 morning. I don't know why I put p.m. on
6 it.
7 **Q.** Okay. And that was to report
8 to begin the process of --
9 **A.** Of training.
10 **Q.** -- training and completing
11 paperwork and that stuff?
12 **A.** Yes, I completed a lot of
13 paperwork.
14 **Q.** Okay. And then we got a
15 number on the right 36116. What does
16 that mean?
17 **A.** That -- that is a zip code,
18 that Montgomery route, that is the zip
19 code of that route.
20 **Q.** Who told you that?
21 **A.** Well, Kent told me that.
22 **Q.** Okay. So, this wasn't
23 something written on this piece of paper

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1 the presentation day when Stan was there?
2 **A.** No, sir.
3 **Q.** All right. Was anything
4 else -- well, no. I withdraw that.
5 Then we have motel plus
6 Birmingham plus kids. What does that
7 mean?
8 **A.** I don't know. It was probably
9 something to jog my memory about my kids,
10 but when I was going to be -- well, just
11 the motel Birmingham -- I was just doing
12 some --
13 **Q.** Just doodling?
14 **A.** Doodling, I guess, on that to
15 jog my memory.
16 **Q.** What about underneath the next
17 line there, we have a 1-800 number for
18 Joe McConnell. Was that something that
19 was written down the day of --
20 **A.** That was --
21 **Q.** -- the seminar?
22 **A.** No, that was after I went to
23 the -- before I ever went to Birmingham,

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1 I went to the terminal to see Stan
2 because I had to go to the terminal. I
3 had to do paperwork there, and I got this
4 information on who to contact at the
5 Birmingham -- Birmingham terminal where I
6 was going for training, and he gave me
7 Joe's number. He gave me the 1-800
8 number there.

9 Q. All right. And, then, to the
10 left of that, we have FedEx B'ham, and
11 then -- what was that all about, those
12 entries there, and then it says M-O-R-I-O
13 or M-A.

14 A. That's Mario. He was a -- he
15 was an individual at the Birmingham
16 terminal that I called to confirm
17 everything, and that's who I spoke to, so
18 I just wrote his name down.

19 Q. Yes. And then to the left of
20 our exhibit sticker here, we have
21 March 29th, Joe, 423-296-0253. What's
22 that about?

23 A. I had talked to Joe --

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1 Q. Is this Joe McConnell?

2 A. Yes, it's Joe McConnell -- on
3 a couple of occasions to see what was
4 actually going on because I was getting
5 the runaround as far as asking questions,
6 and nobody seemed to know as far as my
7 paperwork being processed and stuff, so I
8 knew that Joe -- I knew that Joe was
9 coming from Birmingham to Montgomery kind
10 of -- until the transition with Kent took
11 place.

12 Q. Yes.

13 A. And I knew he was the go-to
14 man, so that's the reason why I was
15 calling him.

16 Q. All right. And then
17 underneath the sticker we have in
18 brackets 24 January?

19 A. Right.

20 Q. What was the significance of
21 that?

22 A. Actually that may be the date
23 the session was held on. If not, I

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1 really don't know.

2 Q. All right. And then to the
3 right of that we've got more Joe
4 McConnell numbers, it looks like. Is
5 that what those are?

6 A. Yes, sir. That's just a --
7 other than the 1-800 number.

8 Q. All right. And then back,
9 next line down, two open, eight day.
10 What does that mean?

11 A. I have no clue. I don't know.

12 Q. Is that your handwriting,
13 though?

14 A. Yes, sir, it is.

15 Q. And then flip the page over,
16 if you would. What is -- what's the
17 significance of these items? Just start
18 on the top line. We've got a 404 number,
19 which I know is Atlanta.

20 A. That was a -- when all this
21 was coming down, they were trying to tell
22 me they wanted me to be a contractor out
23 of Anniston, Alabama. DC, these are

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1 actually the -- the first and last

2 initials of a recruiter for FedEx, and
3 this -- I believe this may have been his
4 cell number or a number that I could
5 locate him because he had called and
6 wanted to talk to me and left his number.

7 Kelly Womble --

8 Q. When was that?

9 A. That was -- that was after
10 May. Because that's when they were
11 asking me about going to Anniston, and
12 that was just -- there was no way that
13 was feasible, so I turned around and I
14 called the terminal manager in Anniston.

15 Q. Kelly Womble?

16 A. No, Tony DeRosa.

17 Q. Okay.

18 A. And --

19 Q. 256 looks like that might be
20 an exchange over there.

21 A. And Tony didn't have a clue to
22 what I was even saying. He said that
23 will never happen, Charlie. The route

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1 that they are offering you, I already
2 have a guy trained. As a matter of fact,
3 that guy that was training for that
4 particular route was the one who wound up
5 purchasing my truck. But they were
6 saying, oh, we've got one in Anniston,
7 but it just wasn't feasible.

8 **Q.** Okay. So, your point is that
9 you had talked to Tony DeRosa who told --
10 what about -- who is Kelly Womble?

11 **A.** She's a lady that worked in
12 his office, that answered the phone that
13 day.

14 **Q.** Okay. So, when you talked to
15 Tony, you just had the conversation you
16 just described?

17 **A.** Right.

18 **Q.** Where he said, no, in fact,
19 there wasn't an opportunity there or --

20 **A.** Exactly right. He said there
21 was no opportunity there. He didn't know
22 what -- he didn't even know why they was
23 even approaching me with that

1 doing the one in the evenings, and this
2 is some notes I wrote down, MVR, DOT
3 background check, Tuesday through
4 Saturday, which was the schedule that you
5 worked. Home delivery. Peak -- they
6 spoke about the peak season, holiday,
7 home base. They said 60 to 65 a year and
8 over.

9 When I went into the meeting,
10 and there is a tape on this, I asked them
11 specifically about routes. Darrell
12 Clark, his reply to me -- and if they had
13 any contractors that were waiting. He
14 said, yes, we have an individual waiting,
15 but this individual is very picky in what
16 he is wanting, and I knew all along that
17 they was -- they probably were talking
18 about me.

19 **Q.** So, where did this meeting
20 take place?

21 **A.** At the Holiday Inn.

22 **Q.** So, you went to the advertised
23 informational session like the one you

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1 opportunity, that there was no
2 opportunity.

3 **Q.** All right. But in any event,
4 you said that was not practical for you
5 to have a route in Anniston?

6 **A.** Not living in Elmore County.

7 **Q.** All right. Well, let's --
8 let's -- let's look at this next -- this
9 is a one, two, three, four --

10 **MR. NELMS:** Is that original?

11 **MR. SPOTSWOOD:** Yeah.

12 **A.** Oh, the name of that
13 individual, Joe -- I'm sorry. Bob.

14 **Q.** Yes.

15 **A.** DC, it was Darrell Clark.

16 **Q.** Darrell Clark, okay.

17 **A.** Darrell Clark.

18 **Q.** What are you looking at there
19 that answered that question for us?

20 **A.** Well, this is looking at --
21 this was a meeting that FedEx had on
22 6/14/05, and it was held by Tricia Jones
23 and Darrell Clark, and I believe Kent was

1 had attended for Stan?

2 **A.** Yes, I did.

3 **Q.** And this is obviously after
4 you had filed your lawsuit. And I take
5 it Darrell Clark had no clue who you
6 were?

7 **A.** No, sir, he did not.

8 **MR. NELMS:** By the way, just
9 for the record, he didn't do this per my
10 instructions.

11 **Q.** How many people were at this
12 meeting?

13 **A.** Probably half a dozen.

14 **Q.** Okay. If I heard your
15 testimony correctly, they said that there
16 was a person kind of in line, but that
17 person was very picky, and you figured
18 they were talking about you?

19 **A.** I assumed they were, they were
20 talking about me. They said they had a
21 gentleman.

22 **Q.** So, what is the significance
23 of 60- to 65-year and over? What does

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1 that mean?
2 A. Oh, 60 to 65,000 and over
3 income.
4 Q. I see. As opposed to, you
5 know, before expenses?
6 A. Oh, they didn't say that.
7 Q. But that would be consistent
8 with what you wrote down from the first
9 meeting, 50 to 75, less expenses.
10 A. Yeah, that's right.
11 Q. Isn't that what Stan had told
12 you?
13 A. Yeah, he said 50 to 75 a year
14 income. He didn't say less expenses.
15 Q. All right.
16 A. Expenses -- but, yeah.
17 Q. All right. And then was it
18 your -- your note here says peak season,
19 holiday, home base. What's the
20 significance of that comment?
21 A. It was just -- there was no
22 significance. They were going over the
23 peak season of the year, which is during

1 A. -- when I went in.
2 Q. Anything else on those yellow
3 sheets --
4 A. No, sir.
5 Q. -- or is that unrelated to the
6 litigation or your communications with
7 anybody at FedEx?
8 A. No.
9 MR. NELMS: Off the record.
10 (Off-the-record discussion.)
11 (Whereupon, Defendant's
12 Exhibit Y was marked for
13 identification.)
14 Q. (BY MR. SPOTSWOOD:) Yeah, let
15 me -- this is -- it says Iraq and then it
16 says career?
17 A. Well, I had a son that was
18 over there in Iraq fighting.
19 Q. Right.
20 A. And that was a -- actually
21 that has to do with some kind of access
22 number that I had to use to be able to
23 call him.

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1 the holidays.
2 Q. During the Christmastime?
3 A. Right.
4 Q. And home base, what was that a
5 reference to?
6 A. Just home terminal, in the
7 area that you lived.
8 Q. Okay. And what we've been
9 talking about are the notes reflected on
10 Defendant's Exhibit X here, correct?
11 A. Correct.
12 (Whereupon, Defendant's
13 Exhibit X was marked for
14 identification.)
15 Q. Was there some sort of a
16 sign-up sheet at these meetings?
17 A. No, sir.
18 Q. So, if somebody wasn't
19 interested, they didn't have to leave any
20 indication of having attended?
21 A. It was not -- I did not see a
22 sign-up sheet --
23 Q. Okay.

1 Q. Okay.
2 A. So, I mean, you know, I'm just
3 doing some doodling because he would
4 e-mail me, and I would write stuff down.
5 Q. All right.
6 MR. NELMS: Keep that.
7 A. Yeah, I'm going to.
8 MR. NELMS: Put it in your
9 pocket.
10 Q. Defendant's Exhibit Y here,
11 these are your notes, correct?
12 A. Yes, sir.
13 Q. And it says job apps at the
14 top, 6/13. It lists several items.
15 What's the significance of this? Are
16 these places that you were looking for a
17 job?
18 A. Yeah, I had contacted some of
19 these people. I had contacted Dixie
20 Homecrafters because I knew this guy
21 there. Friendly Ford. You know,
22 Wal-Mart in Prattville, I don't know what
23 that really is, if it was a contact.

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1 Dairy Fresh, Farmers Ranch and Health,
2 because this guy had called and left his
3 number, and he's -- he could see from my
4 resume where I had sold insurance.

5 Q. Yes.

6 A. But because of this situation,
7 my insurance, I've lost my insurance
8 license, and I told -- you know, I spoke
9 to him, and I told him I can't do that
10 now. I'd have to go back and retest and
11 everything.

12 And then this is the meeting
13 that I went to on the 12th. And I don't
14 know -- okay. This is -- well, this was
15 DHL.

16 Q. So, this was the meeting you
17 went to in connection with getting a job
18 at DHL?

19 A. Yeah, I assume it is.

20 Q. Okay. By the way, I looked
21 further at the W-2, the best I could read
22 it. It looks like you might have been
23 working for one of the contractors for

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1 DHL rather than for DHL?

2 A. They are contractors.

3 Q. Okay. So, they have a similar
4 situation to FedEx, their drivers are
5 independent contractors, and then those
6 contractors can hire employees to work
7 for them?

8 A. No, sir. It's -- it's
9 different from that. What it is --

10 Q. Well, who were you working for
11 is what I'm asking you?

12 A. Well, I was working -- I guess
13 you would say it's Ozark Delivery. He's
14 a franchise. The guy -- an individual
15 purchases a franchise, and that's the way
16 DHL works, and then they work under the
17 DHL umbrella. Everything is labeled DHL.
18 It was actually Ozark Delivery Service or
19 something like that. But it's not like a
20 driver. He was not a driver.

21 Q. I understand. All right.

22 MR. NELMS: Just so I
23 understand. SO, you were an employee of

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1 Ozark. Ozark was a franchisor of or
2 franchisee of --

3 A. DHL.

4 MR. NELMS: -- DHL.

5 MR. SPOTSWOOD: We've got
6 three or four pages on this one, and we
7 might want to make a quick copy of this
8 so you can follow along with me.

9 (Off-the-record discussion.)

10 (Whereupon, Defendant's
11 Exhibit W was marked for
12 identification.)

13 Q. (BY MR. SPOTSWOOD:) I'm
14 looking at Exhibit W, Mr. Thornton, which
15 is four pages of handwritten notes, I
16 think, that are in your handwriting,
17 correct?

18 A. Yes, sir.

19 Q. Okay. At the top of the first
20 page, can you tell me what that's about,
21 that reference to Curtis and just copay?

22 A. Yes, that was an individual at
23 Mega Life and Health where I put an

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1 inquiry in as far as receiving health
2 insurance through Mega Life. That was
3 the individual I contacted. And it says
4 tonight or Friday. That was a time that
5 they had available that they could come
6 set -- visit with me and the wife as far
7 as doing the insurance.

8 Q. Okay. That was a health
9 insurance policy that you were going
10 to --

11 A. We took it out.

12 Q. -- consider or took out?

13 A. Yes, that's right.

14 Q. All right. What's the next
15 sentence?

16 A. Willie Durham?

17 Q. Yes.

18 A. Willie -- Willie Durham is the
19 agent that my wife actually works for who
20 owns the State Farm franchise.

21 Q. Yes.

22 A. He had called me on that day
23 to offer me the job as far as an agent

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1 working for him. Well, at that time I
2 had bigger and brighter plans, and that's
3 when I recommended my wife to him.

4 Q. Okay. And then underneath
5 here we have Alfa, bi-monthly and then
6 have some --

7 A. That's just basically
8 information from Alfa on health
9 insurance.

10 Q. And then the next entry here?

11 A. That was my van number. It
12 says Workhorse truck. And that was the
13 cost of the Workhorse van, and 72 months
14 down payment or down, and I don't know
15 what those figures are. But, anyway, it
16 figures up to be what the -- I was going
17 to be paying per month and all that good
18 stuff.

19 Q. All right. And then I see
20 some figures on the bottom here about Tim
21 Edmunds and contractor relations. This
22 is -- this was, I take it, late in the
23 game when you were in the process of

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1 trying to figure out what your situation
2 was with the van, correct?

3 A. Well, it says talk to -- I
4 talked to him on 5/18. I -- yes. It was
5 around the 18th of May, and then he gave
6 me my -- that's when I got my -- the ID
7 number and my work area number.

8 Q. And as I recall, we're talking
9 about Richard Gene. It's written down
10 here. I don't know how -- which is the
11 correct spelling, but your conversation
12 with Richard Gene. You actually had more
13 than one was -- we have it as J-E-A-N,
14 and you have it here as G-E-N-E, correct?

15 A. Well, I may be -- I may be
16 wrong.

17 Q. I don't know which one of us
18 is correct on that.

19 A. I don't know.

20 MR. NELMS: You both may be
21 wrong.

22 A. That's true.

23 Q. And you would have recorded

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1 this conversation with Richard Gene,
2 correct?

3 A. I assume that I -- I know I
4 recorded a conversation with Mr. Gene.

5 Q. From the looks of the
6 transcript, you left a message. I'm
7 looking at Exhibit R. It looks like you
8 left a message for him, and then he
9 called you back, and your actual phone
10 call with Mr. Gene is found on page 45 of
11 that transcript. I'm sorry. 41 -- no,
12 45. That's correct.

13 A. (Examining document.)

14 Q. Does that look right?

15 A. Yes, sir.

16 Q. And then your note here, it
17 says talk to on 5/18/05, so would it
18 be -- would that help us figure out that
19 this conversation that was recorded
20 happened on 5/18/05?

21 A. Yes, sir. That's my
22 handwriting. I put that down.

23 Q. All right. And you don't

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1 recall, do you, any other conversation
2 other than the one conversation you had
3 with Mr. Gene or -- actually there's
4 another one reflected on the tape here.
5 It's Richard Gene 131. Let me see if you
6 actually spoke with him then. I saw -- I
7 do see in the transcript that you had a
8 relatively short conversation with him on
9 pages 131 and 133. This is the third
10 entry here -- and you do say these calls
11 were made on the 19th of May, so I take
12 it --

13 A. Well, this -- the particular
14 time I took these notes here, they were
15 made on the 18th.

16 Q. Right.

17 A. 5/18.

18 Q. And I think there was a long
19 conversation on one occasion?

20 A. Apparently so, yes, sir.

21 Q. And then you called him back?

22 A. Yes, sir.

23 Q. And -- or you left him a

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1 message, he or one of the two of you.
2 No, you reached him. Well, actually, no,
3 it looks like you left him a message.
4 That's what you did on that time.

5 So, maybe that was the only
6 occasion, according to those transcripts,
7 that you actually talked to Gene was that
8 one time. You left him two messages. Do
9 you have any recollection of talking to
10 him more than once personally?

11 A. No, sir, I don't. I know I
12 spoke to him -- I know I spoke to him. I
13 don't know --

14 Q. And this note reflects, then,
15 that would have been on the 18th of May?

16 A. Yes, sir.

17 Q. All right. Do you know what
18 work area is defined by these numbers on
19 this sheet, 112-069?

20 A. No, sir, I do not.

21 Q. And then the top of page two
22 of Exhibit W, we have referenced a truck,
23 668 -- truck insurance, 668. Was that

Page 170

1 how much your truck insurance was per
2 year?

3 A. I -- well, I'm not really
4 sure. It may be a -- it's possible. I'm
5 not really sure. I know it says truck
6 insurance \$668.

7 Q. Okay.

8 A. I'd have to look at the
9 policy.

10 Q. All right. And then I see
11 reference to your lawyers here. I know
12 who they are.

13 A. Yes.

14 Q. Who is Patrick Hale?

15 A. He was an attorney that
16 recommended Andy.

17 Q. And then down below that I see
18 Jeff White. Who is Jeff White?

19 A. That, I assume, is the -- he's
20 either an engineer with FedEx or Kent's
21 boss. I'm not really sure.

22 Q. And is that -- is -- the very
23 first conversation recorded on Exhibit R

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1 is listed as a phone call to Jeff White,
2 and you -- actually, it doesn't look like
3 you spoke to Jeff. You spoke to somebody
4 by the name of Cheryl and left a message
5 for Jeff.

6 A. You mean Exhibit O?

7 Q. Yes, just looking at the first
8 two pages of that.

9 A. Oh, yes. I see. I know you
10 said R. I was looking for R.

11 Q. Oh, yeah. Sorry about that.

12 A. Yes. That's correct. I
13 assume Cheryl was the office or someone.

14 Q. Do you recall speaking to Jeff
15 White?

16 A. Oh, sure, I spoke to Jeff
17 White maybe a couple of occasions.

18 Q. And what did you talk to Jeff
19 about?

20 A. I don't recall. I'd have to
21 go back to the transcripts to look in
22 there.

23 Q. I don't see any recorded

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1 conversations with Jeff White.

2 A. I know on one occasion I spoke
3 to Jeff. This was the Saturday -- I
4 don't recall the date, but the Saturday
5 of the week I was supposed to start work
6 and because I was wanting to know what
7 was going on, and he said at that time he
8 was going into a meeting and he had all
9 of my paper -- all of my paperwork into
10 the meeting, and he would get back in
11 touch with me the following week. And I
12 never heard from him.

13 Q. And is that what prompted you
14 to call him on this occasion where you
15 recorded the effort to reach him?

16 A. It may be that -- possible
17 that that's it.

18 Q. Okay.

19 A. But I -- because I know before
20 I recorded these I had had conversations
21 with Jeff to find out what was going on.

22 Q. Okay.

23 A. Because I didn't know what to

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1 do. I didn't know what to do.
2 **Q.** And you have some notes down
3 here underneath the Jeff White phone
4 number on this Exhibit W, page two. Were
5 those the things that you were going to
6 tell him about if you reached him, is
7 that sort of your outline of topics?
8 **A.** It may have been. It may have
9 been. Or I know it was some things I put
10 down on paper pertaining to the
11 situation.
12 **Q.** And then below those we have
13 this note: "Spoke to Omar Newman on the
14 20th. Jim French, regional director."
15 Was that the 20th of May?
16 **A.** It would have been.
17 **Q.** And do I understand from this
18 that he told you to contact Jim French, a
19 regional director, or --
20 **A.** Yes.
21 **Q.** Did you do that?
22 **A.** I believe I tried. I'm -- I
23 really don't remember if I had a

1 **A.** Yes.
2 **Q.** -- would you have recorded the
3 fact that you called him and left him a
4 message?
5 **A.** I would have -- yes, I would
6 have. If I would have had a number, I
7 don't -- I don't -- Omar may have -- I
8 really don't think I had a number for
9 Jim. I think Omar was going to have him
10 call me, if I recall correctly. If I had
11 had a number for him and would have
12 called, I would have definitely have
13 recorded it because I may have got him on
14 the phone.
15 **Q.** All right. And then on the
16 top of the next page we have an address
17 1015 Seaton Court, Montgomery, 36116. Is
18 that Kent's home address?
19 **A.** It may be. I'm --
20 **Q.** I recall from the transcript
21 that you -- that you asked him what his
22 home address was.
23 **A.** Okay. Yes. I remember now.

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1 conversation with Jim or not.
2 **Q.** I don't see any transcript of
3 it. I'll say that.
4 **A.** Okay. But it's possible that
5 I left a message for him to call, and I
6 never heard from him.
7 **Q.** And these other transcripts do
8 reflect when you left messages, so I
9 guess you just didn't record that, if, in
10 fact, you called him?
11 **A.** If I would have heard from
12 him, I would have recorded it.
13 **Q.** All right. And would you have
14 recorded it if you had left him a message
15 on or after the time you started making
16 these conversations, recordings?
17 **A.** Ask that again.
18 **Q.** That was a pretty botched up
19 question.
20 **A.** Oh, that's fine.
21 **Q.** If you had called him on or
22 after the dates when you started making
23 these recordings --

1 Yes. Yes.
2 **Q.** Okay. So, this is what you
3 were writing down while you were on the
4 phone with him recording the
5 conversation?
6 **A.** Yes.
7 **Q.** Okay. And then underneath
8 that it says letter to Kent and then --
9 that's number one, and then two, Jeff. I
10 understand letter to Kent. What does
11 two, Jeff mean. Paren two, Jeff?
12 **A.** This was pertaining to my
13 truck payment.
14 **Q.** Okay.
15 **A.** I remember that. And --
16 **Q.** Jeff White then, is that who
17 you're referring to there?
18 **A.** Yes. Yes.
19 **Q.** And that was kind of the
20 action plan, you were going to write a
21 letter to Kent, and then you were also
22 going to get in touch with Jeff?
23 **A.** Well, I -- yes.

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1 Q. If you want to explain, I'm
2 interested in it.
3 A. No, I'll wait for a question.
4 Q. Okay. Then to the right it
5 says make a case, paren, write it out,
6 close paren, history and present. What
7 does that refer to?
8 A. That was some notes I was just
9 writing when I was -- after I talked to
10 Andy.
11 Q. Oh, okay. Then, underneath
12 that we have route given to -- I'm having
13 a little trouble reading this?
14 A. Yes.
15 Q. Could you decipher that for
16 me?
17 A. Yes. It says given -- says
18 route given to Tina. That's the
19 Montgomery route. That's 36116. Isaac,
20 which was training for Troy, he accepted
21 that. When I was there, he didn't know
22 if he was going to take it, and Kent
23 didn't know if he wanted him to have it.

1 A. No, sir, I don't.
2 Q. And then it says SS and
3 driver, or diver, rather?
4 A. I don't know. I don't -- I
5 don't recall.
6 Q. All right. And then the last
7 page here, can you explain those entries
8 for me?
9 A. No, sir, I really don't. It
10 was something that I just -- I wrote down
11 there to jog my memory pertaining to
12 something. I guess it took place on the
13 14th of April and had to do with a truck
14 and insurance. I don't know why I put
15 paid also on there, but anyway. I don't
16 recall.
17 Q. All right.
18 MR. NELMS: Let's break for a
19 minute.
20 MR. SPOTSWOOD: Absolutely.
21 (Said deposition was in recess
22 at 1:30 p.m. until 1:45 p.m.,
23 after which the following

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1 And then Wetumpka, the Elmore/Wetumpka
2 route that I was -- well, actually it was
3 given to Pettaway. I don't even remember
4 Pettaway's first name.
5 Q. Okay. And then the next thing
6 you have written down here is advertise
7 to sell truck?
8 A. Right. That was something
9 that Andy told me I needed to do, which I
10 understood that I had to start some type
11 of advertisement. How are you going to
12 sell a FedEx truck, though? But that was
13 just a note.
14 Q. And you wrote down two year
15 contract?
16 A. Right. That was pertaining to
17 the conversation with Kent.
18 Q. All right. And then we've got
19 a one -- I can't tell if --
20 A. 1-800 or -- I don't know what
21 that number is.
22 Q. All right. Do you know who it
23 is or --

1 occurred:)
2 Q. (BY MR. SPOTSWOOD:) What
3 specifically did Mr. Trott say at your
4 information session about a route, if you
5 can remember, apart from what's written
6 on your notes that we've already talked
7 about?
8 A. Well, that -- that was -- that
9 was my biggest concern, and after the
10 meeting -- after the meeting, we actually
11 met with Stan in the lobby, my wife and
12 I, and we asked him more questions. And
13 he specifically said that they -- being
14 specific as far as what he was telling
15 us, that there was three available out of
16 the terminal in Montgomery. And which he
17 had already named them. And I was
18 telling him, hey, that would be -- you
19 know, the Wetumpka/Elmore route would be
20 great because I live in Elmore County. I
21 know Elmore County, and I just thought
22 that that was just a Godsend, and
23 basically that was -- I didn't push it

45 (Pages 177 to 180)

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1 any further. There was no need. He was
2 telling us that there were three routes
3 available.

4 Q. Okay.

5 A. Or two, possibly three,
6 because of the other guy in -- with Troy.

7 Q. Did he make any specific
8 reference to any of the other drivers at
9 that time, Derrick Pettaway, for example?

10 A. No, sir.

11 Q. All right. And he said that
12 there are routes available, might be
13 routes available?

14 A. There are.

15 Q. May be routes available?

16 A. No, sir.

17 Q. What was his exact
18 terminology, if you can remember?

19 A. There are three -- two to
20 three routes that are available in the
21 Montgomery terminal.

22 Q. Yes.

23 A. They were not sure about Troy,

1 those routes were going to be available
2 to you if you get through the training?

3 A. It was a definite. I viewed
4 it as a definite.

5 MR. PARKER: Definite what?

6 Q. No, no. I do need an
7 explanation of that terminology. You
8 viewed it as a definite. A definite
9 what?

10 A. Well -- okay. When he was
11 telling us that they are available --

12 Q. Yeah.

13 A. -- there's two available,
14 possibly three that are available.

15 Q. Yes.

16 A. But you've got to meet this
17 certain criteria. I knew that I could
18 meet the criteria.

19 Q. Right.

20 A. It was just up to knowing
21 which one I would accept.

22 Q. Did you feel that if those
23 routes changed or, you know,

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1 but they knew that 36116 and
2 Wetumpka/Elmore, Elmore County, those
3 routes were available.

4 Q. All right.

5 (Off-the-record discussion.)

6 Q. (BY MR. SPOTSWOOD:) And when
7 you say the routes were available, aren't
8 you necessarily talking about these
9 routes would be available in the future
10 if you were successful in completing your
11 screening and your training?

12 A. Everything hinged on being
13 successful. That doesn't mean that the
14 routes were not still available to
15 someone. But I was successful.

16 Q. Right. And did you -- did he
17 tell you whether or not others might wind
18 up with those routes?

19 A. No, sir, it was never
20 mentioned to me.

21 Q. All right. So, are you saying
22 here today that you viewed what Mr. Trott
23 said to you that day as a promise that

1 circumstances were different at the time
2 that you finally had become qualified
3 that it would have been wrong or unfair
4 for those routes not to be given to you?

5 A. Sure. At -- now, state your
6 question again.

7 Q. Yeah.

8 MR. NELMS: Object to the
9 form.

10 Q. Did you feel -- you know, here
11 you go. You go to an informational
12 session. You haven't been to the first
13 leg of training. You have not signed a
14 contract, you have not demonstrated
15 yourself to be qualified to do anything
16 for FedEx, yet, if I'm hearing you
17 correctly, what you're saying is the
18 moment you walk out of that room in your
19 mind you had a contract with FedEx to
20 give you a route?

21 MR. NELMS: Object to the
22 form.

23 A. No.

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1 Q. That's not what you're saying?
2 A. No, that's not what I'm
3 saying.
4 Q. All right.
5 A. I'm saying that if Charlie
6 went through the process, which a
7 contract was never mentioned, I will
8 state that, but if I went through the
9 training that FedEx wanted you to go
10 through, if I jumped through all the
11 hoops that they had aligned, that, of
12 course, I would have a route because
13 there was two, possibly three routes open
14 for a contractor. That is the reason why
15 they had the informational session.
16 Q. Did he tell you that's why he
17 had the informational session?
18 A. Yes.
19 Q. Did he not say that they liked
20 to have people lined up --
21 A. No, sir.
22 Q. -- in the pipeline?
23 A. No, sir. That never ever came

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1 up.
2 Q. Never occurred to you that
3 FedEx would have a desire to have
4 qualified, trained people lined up in the
5 event openings were available?
6 MR. NELMS: Object to the
7 form.
8 A. No, sir. No, sir. It was
9 never put that way. They needed people
10 to go to work, to be contractors.
11 MR. NELMS: Answer his
12 questions.
13 Q. You said a contract was never
14 mentioned, but he was describing a job as
15 an independent contractor, correct?
16 A. Right, yes.
17 Q. And, so, didn't you understand
18 from that that eventually you would have
19 to sign a written contract?
20 A. No, I did not.
21 Q. You didn't understand that?
22 A. No, I did not.
23 MR. NELMS: Object to the

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1 form.
2 MR. SPOTSWOOD: Too late.
3 (Off-the-record discussion.)
4 Q. (BY MR. SPOTSWOOD:) Look with
5 me, if you would, at Defendant's Exhibit
6 L.
7 A. L.
8 MR. NELMS: I think I have L.
9 One second. Let me get it for you.
10 Q. These are the documents, I'll
11 tell you, that were produced by FedEx as
12 a part of its initial disclosures in the
13 case.
14 (Whereupon, Defendant's
15 Exhibit L was marked for
16 identification.)
17 Q. And I want you to flip over
18 with me, if you would, to -- do you see
19 they are numbered at the bottom
20 right-hand -- it says FXG and then
21 numbers on the bottom of the page?
22 A. Yes, sir.
23 Q. I want to look at the

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1 contractor driver information sheet which
2 goes on for a few pages. All right. Is
3 this something that you submitted to
4 FedEx? You might have done it online.
5 I'm not sure exactly how this works.
6 A. Yes.
7 Q. And let's look at the first
8 couple of pages here, 04, 05, 06. Did
9 you fill the information out here that's
10 reflected on those pages?
11 A. Yes, sir.
12 Q. You gave some references. Who
13 is Jeff Owens?
14 A. He's a friend of mine.
15 Q. What does he do?
16 A. As a matter of fact, he's
17 working with UniFirst now, same company
18 I'm with.
19 Q. All right. Mike Proper, what
20 does he do?
21 A. He was a sales manager. I
22 don't know where Mike is. I haven't
23 stayed in contact with him.

47 (Pages 185 to 188)

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1 Q. Where was he a sales manager
2 at the time that you completed this?
3 A. American General.
4 Q. And Ray Harris, where was he a
5 sales agent?
6 A. American General.
7 Q. Okay. Let's flip over to page
8 07. This is the contractor driver
9 information sheet, and on the left-hand
10 side it says CDAS. Is this another
11 document that you completed yourself?
12 A. Yeah.
13 Q. Did you do it online? Was
14 this something --
15 A. Yes.
16 Q. -- that you sat at the
17 computer and filled out?
18 A. Yes.
19 Q. Where?
20 A. At the terminal.
21 Q. All right. And then over on
22 page ten, that's your signature there,
23 1/14/05, is that correct?

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1 A. Yes, sir.
2 Q. And then the next document I
3 have here is FedEx Ground -- this is the
4 one -- actually I'm not sure where the
5 Bates numbers are on this. Oh, here they
6 are right here. It's on the sticker in
7 the middle of the page FXG 11 and 12, 13.
8 Are these other documents that you
9 completed in connection with the
10 contractor employment process?
11 MR. NELMS: I'm sorry. I
12 didn't understand which pages you were
13 actually referring to.
14 Q. It's 11, 12, 13. Yeah, they
15 are in the middle here. See they are on
16 the little stickies is what they are.
17 MR. NELMS: I don't see that
18 one. Anyway, I'm --
19 A. Oh, I see 11. This must be
20 11. This must be 12.
21 Q. Right.
22 A. Yes, sir.
23 Q. Okay. There's a little sticky

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1 note on the top here, have repeated --
2 have called repeatedly at 615-749-2198.
3 Local number does not give out any
4 information. Is that your handwriting or
5 somebody else's writing?
6 A. No, sir, that is not mine.
7 Q. Do you know whose that is?
8 A. No, sir, I don't.
9 Q. Okay. What this apparently is
10 is a reference questionnaire, and I take
11 it what is going on is you completed the
12 top part, is that right?
13 A. Yes, sir.
14 Q. And then they were trying to
15 get information and they weren't having
16 any luck is what I think is going on
17 here.
18 As it stands, Trott, he was
19 the one helping you through this process?
20 A. No, sir. There was a young
21 lady, and I do not recall her name that
22 got me set up on the computer to do
23 everything --

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1 Q. All right.
2 A. -- that I needed to do.
3 Q. All right. It does look like
4 Stan is the one who was signing the
5 documents down here on the 14th. Is that
6 when you were completing these papers,
7 January the 14th?
8 A. Yes, sir, apparently so.
9 Q. If we flip on back to 18 --
10 A. Okay.
11 Q. -- it says driver's receipt,
12 and it says you're acknowledging the
13 receipt of FedEx motor carrier safety
14 regulations, which I think is --
15 MR. PARKER: They are in a bag
16 behind Andy.
17 A. Yes, sir, that's that little
18 manual or one of them.
19 Q. And is this the book that they
20 gave you? I'm just going to mark that as
21 Exhibit Z.
22 (Whereupon, Defendant's
23 Exhibit Z was marked for

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1 identification.)
2 A. Yes, sir.
3 MR. SPOTSWOOD: And, Gary,
4 I'll tell you right now I'm not
5 interested in copying the whole book,
6 just the cover page.
7 (Off-the-record discussion.)
8 Q. (BY MR. SPOTSWOOD:) I'm
9 sorry. You answered that question?
10 A. Yes, sir, I did.
11 Q. And if you look with me on 19,
12 document number 19, it says at the top
13 Home Delivery Driver Qualification
14 Control Form. That reflects that you
15 were a full QPDL graduate as of
16 apparently 1/21/2005. Had you completed
17 all your training by then?
18 A. I don't know what QPDL stands
19 for.
20 MR. GASTINEAU: Quality --
21 quality --
22 Q. Let him answer.
23 MR. GASTINEAU: Pickup and

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1 delivery training.
2 A. Okay.
3 MR. GASTINEAU: But the form
4 was -- that's the day the form was filled
5 out, and that's -- right after that,
6 Charlie went to Birmingham to take the
7 QPDL class.
8 Q. Okay. I know we're not
9 supposed to have a round robin here.
10 MR. NELMS: I understand.
11 Q. But sometimes it's quicker to
12 do that. So, is that what happened,
13 after you filled that form out, you went
14 to Birmingham and took the class?
15 A. Well, this is my first time to
16 see this, but I -- yes.
17 Q. Okay.
18 A. I went to Birmingham.
19 Q. All right.
20 (Off-the-record discussion.)
21 Q. (BY MR. SPOTSWOOD:) I'm
22 looking at page 23, which is the P & D
23 Contractor/Driver Safety Instruction

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1 Summary.
2 A. Yes, sir.
3 Q. Was this form completed by
4 you? Are these your signatures along
5 here?
6 A. Yes, sir, these are my
7 signatures.
8 Q. And is that Stan Trott's notes
9 on the right or somebody else's, if you
10 know, facilitator's signature line?
11 A. I do not recognize it. I
12 would -- I do not recognize the
13 handwriting. I don't know. I can't
14 judge that. I know that that's me here.
15 Right here.
16 MR. NELMS: And he points to
17 the left side.
18 A. Somebody signed off here. I
19 don't have a clue who that may be.
20 Q. And then over here on pages --
21 page 25, we have a -- a Contractor/Driver
22 Safety Instruction Summary.
23 A. Yes, sir.

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1 Q. And these have various dates
2 on them, 2/3/05, 2/15/05, 1/31/05 and so
3 forth. Looks like the last one is
4 2/3/05, and the facilitator is Omar
5 Newman.
6 A. Correct.
7 Q. And what exactly did Omar do
8 with you?
9 A. We had instructional training
10 -- classroom training.
11 Q. And that was up in Birmingham?
12 A. Yes, sir, in Birmingham.
13 Q. And Omar was running the show
14 up there?
15 A. Right. And then we had driver
16 training out in the -- in Birmingham.
17 And then we also had to --
18 Q. Who rode around with you in
19 Birmingham?
20 A. Well, there was -- there was
21 two other fellows, and Omar.
22 Q. Do you remember the others?
23 A. No, sir, I don't remember

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1 their names. And then we had -- and
2 there was a young lady that also went
3 with us. Then we had -- had a driving
4 course that we had to drive over,
5 backing, turning, such as that. We had
6 to pass that.

7 Q. If we flip over to pages 27
8 and 28, have you ever seen this document
9 before? It's a record of a road test,
10 paren, safety ride, showing the observer
11 as Omar Newman, date of observation,
12 1/31/05?

13 A. No, sir, I have not seen this,
14 but I believe this is what he had -- was
15 checking off the day I was driving.

16 Q. All right. And then over here
17 on page 35, it looks like we have a order
18 form for business support contractors for
19 uniforms. Is that something that you
20 signed?

21 A. Yes, sir, I did sign that.

22 Q. All right. If we flip over to
23 pages 36 and 37, this says CRS (sic)

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1 Observation - Critical Safe Driving
2 Behavior. I can't quite make out the
3 signature. Can you tell me who that is?
4 Is that --

5 A. Where -- where is the
6 signature?

7 Q. On page 37.

8 A. 37.

9 Q. On the left. That's the
10 signature of the observer.

11 A. I remember the young fellow,
12 but I --

13 MR. PARKER: Jermaine Wilson,
14 I think, Jermaine.

15 A. Yeah, Jermaine.

16 Q. Wilson?

17 A. Yeah, I know his last name was
18 Wilson.

19 Q. Okay.

20 MR. PARKER: With a J.

21 Q. Flip over, if you would, to
22 pages 39 and 40. This is called a
23 Primary Service Area Analysis Worksheet.

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1 It looks like it's dated -- I'm not sure
2 if that's 2/9/05 or 2/4/05, but what
3 is -- what was this?

4 A. This was actually observations
5 while I was driving, times that we were
6 in the field and I was driving and
7 delivering.

8 Q. Did you complete this, or did
9 Jermaine?

10 A. No, sir, Jermaine did.

11 Q. All right. What other
12 conversations did you have with Stan
13 Trott regarding whether or when you might
14 be successful in obtaining a contract for
15 a route? You told me about the
16 conversations that happened after the
17 meeting in January. What was the next
18 discussion you had with Stan about --
19 Stan about any route?

20 A. The only discussion I had with
21 Stan after the meeting was when I went to
22 the terminal, my wife and I had looked
23 this over, and I had decided that it was

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1 something that I would like to pursue, so
2 I went to the terminal, and I met with
3 Stan at that time. And I mentioned the
4 Elmore route, Elmore/Wetumpka route, and
5 he said he didn't have a problem with
6 that, but there were things that we had
7 to go through to get everything started.
8 So, basically that's when he started on
9 all the paperwork.

10 The only other conversation I
11 had with Stan was he was asking me when I
12 was going to training, and after that I
13 don't really recall if Stan was there --
14 still there when I came back from
15 training or not. I don't think Kent was,
16 but I don't know if Stan was either, you
17 know. But I did, you know --

18 Q. So, you think you might have
19 had one other conversation with him --

20 A. About the --

21 Q. -- when you came back to the
22 facility here in Montgomery and completed
23 your initial application paperwork about

50 (Pages 197 to 200)

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1 a route?
2 **A.** Oh, yes, I met with him the
3 day that I told him that I was very
4 interested --
5 **Q.** Right.
6 **A.** -- to do the paperwork.
7 **Q.** Right.
8 **A.** And I made my request known to
9 him at the time.
10 **Q.** And your --
11 **A.** He said that was -- that would
12 be great. That's all.
13 **Q.** And your request was that when
14 you became qualified you would want to
15 have the route in Elmore County?
16 **A.** Correct.
17 **Q.** And how did you come to know
18 that Stan Trott left or had retired?
19 **A.** He told us at the beginning of
20 the informational meeting that he was
21 going to retire, and that's how I learned
22 -- because I had never met Stan before.
23 **Q.** Okay.

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1 **A.** He said he had three or four
2 months left or something like that.
3 **Q.** Okay. And once Stan was gone
4 from the scene, which from your testimony
5 may have been at least by the time you
6 returned to Montgomery after your
7 training up in Birmingham, did you
8 then -- did your contact then become Kent
9 Gastineau?
10 **A.** No, sir, it was -- actually it
11 was Joe McDonald -- Mc -- what was his
12 name? I can't remember Joe's last name.
13 **MR. GASTINEAU:** McConnell.
14 **A.** McConnell. Right. It was Joe
15 McConnell.
16 **Q.** What was Mr. McConnell's job?
17 **A.** He was the -- from what I
18 understand, he was the terminal manager
19 in Birmingham, and he was also working in
20 Montgomery just back and forth.
21 **Q.** Okay.
22 **A.** I really -- I didn't know that
23 much about him because I was on the move

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1 doing things, but that's what I
2 understand his position was until they
3 could get an individual to fill the slot.
4 **Q.** Which was Kent?
5 **A.** Well, my understanding at the
6 time that Kent was coming down to fill
7 in -- or not fill in, but manage home
8 delivery, whereas Stan was managing both.
9 **Q.** And you had expressed interest
10 and were seeking to become qualified as a
11 home delivery contractor, correct?
12 **A.** Yes, sir. Yes.
13 **Q.** All right. Apart from what
14 you've told me, do you recall any other
15 discussions you had with Mr. Trott?
16 **A.** No, sir. I think actually
17 that was the last time I spoke to Stan.
18 **Q.** Okay. Did you ever have any
19 discussions with Mr. McConnell or Mr.
20 Gastineau about a driver in Troy by the
21 name of George McKlinney -- I'm sorry,
22 McKinley, M-C-K-I-N-L-E-Y?
23 **A.** No, sir. In Troy? Was that

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1 -- was that your question, Bob?
2 **Q.** Right. He, as I understand
3 it, was a driver from Troy up through
4 December of 2004?
5 **A.** Oh, no, sir.
6 **Q.** You don't recall any
7 discussions with anybody --
8 **A.** No, sir.
9 **Q.** -- with anybody about him?
10 **A.** The only person that I knew
11 that was driving in Troy was a young man
12 by the name of Isaac.
13 **Q.** And that's Isaac Scott?
14 **A.** I never knew his last name.
15 **Q.** Did anyone ever tell you or
16 mention anything to you about the opening
17 in Elmore County being dependent upon
18 perhaps a change in staffing with Mr.
19 Pettaway or a loss of one of his routes?
20 **A.** The only -- the only thing I
21 knew about Pettaway was that he was
22 driving -- he had a route in Millbrook.
23 **Q.** Yes.

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1 A. And that was all I knew that
2 Pettaway had.
3 Q. Millbrook is in Elmore County?
4 A. It's in Elmore County.
5 Q. Right. And all you knew about
6 it was what?
7 A. He had -- he had a route in
8 the Millbrook area that may have went
9 into Autauga County, Prattville, I don't
10 know. But I knew he drove in Millbrook.
11 Q. Okay. What had you been told
12 about the availability specifically in
13 terms of an area, a geographic area about
14 Elmore County, a route being available in
15 Elmore County?
16 A. Basically, it was in the
17 Wetumpka area.
18 Q. And who is talking to you?
19 Who is telling you this?
20 A. Kent.
21 Q. Okay. So, when did Kent come
22 onto the scene?
23 A. I do not recall the -- the

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1 dates.
2 Q. Was it in March? Was he in
3 there part-time, full-time?
4 A. I do not recall the date. I
5 do not know. I was too busy.
6 Q. What were you busy doing?
7 A. I was riding with not just
8 this fellow Jermaine. I rode with other
9 drivers. I -- you know, and Kent might
10 have been there. I'm not sure.
11 Q. What were you doing when you
12 were riding with other drivers? Is this
13 more training or --
14 A. It was basically more -- more
15 training.
16 Q. And when you were training
17 with drivers, you were getting paid for
18 that, right?
19 A. Yes.
20 Q. All right. I thought you had
21 told me that -- that you -- who else did
22 you ride with? You said --
23 A. I rode with one -- I rode with

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1 one other driver.
2 Q. Do you remember the name of
3 that person? Was it a woman or a man?
4 A. It was a -- it was a -- it was
5 a young man. I do not recall his name.
6 Q. And how many days did you ride
7 with that other driver?
8 A. I don't actually recall the
9 amount of -- the amount of days. I just
10 do not. I'm sorry.
11 Q. Do you think you had more than
12 two weeks total --
13 A. No.
14 Q. -- of --
15 A. No.
16 Q. -- training days?
17 A. Oh, yes, training days, but
18 not with just one individual.
19 Q. All right. How many days --
20 training days do you think you actually
21 rode?
22 A. I can't recall. I can't
23 remember.

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1 Q. 15, less than 15?
2 A. I do not recall, I mean.
3 Q. And where were you actually
4 doing the rides with this other
5 individual?
6 A. In the Montgomery area. I
7 do -- I don't know what zip code.
8 Q. Things that are in a different
9 area from the ones you did with Jermaine?
10 A. It was a different area. The
11 one that I rode with Jermaine was
12 actually El -- Wetumpka and 36116, the
13 ones that were supposedly open. And then
14 one other time Isaac was sick, and I ran
15 his route in Troy.
16 Q. And did you do that by
17 yourself, when you ran Isaac's route?
18 A. There was -- yeah, there was
19 days that I went by myself, and there was
20 days that Jermaine actually went with me.
21 For what reason -- I don't know for what
22 reason.
23 Q. And what -- how many times did

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1 you fill in for Isaac down in the --
2 **A.** Just one -- one time.
3 **Q.** -- Troy?
4 **A.** Yes, in Troy.
5 **MR. NELMS:** I don't understand
6 something. You said that you went to
7 Troy to cover the route, and sometimes
8 Isaac went with you.
9 **A.** No, not Isaac. Jermaine.
10 **MR. NELMS:** Jermaine went with
11 you. I'm sorry.
12 **A.** Yes, the customer service guy
13 that was over this.
14 **Q.** Completing your paperwork --
15 **A.** Yes.
16 **Q.** -- and your training program?
17 **A.** Yes.
18 **MR. NELMS:** But you only
19 covered that Troy route once.
20 **A.** Right, while Isaac was out
21 sick with the flu or whatever.
22 **MR. NELMS:** And you went by
23 yourself.

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1 **A.** Yeah, when I say Troy, Pike
2 County basically. I mean, it was a very
3 rural -- rural -- rural route, so.
4 **Q.** What was your understanding of
5 Mr. Scott's status when you were working
6 towards obtaining a driver's position in
7 February and March and April?
8 **A.** Who was Mr. -- who is Scott?
9 **Q.** Who you have been calling
10 Isaac.
11 **A.** Oh, Isaac, what his position
12 was.
13 **Q.** Was he working as a temp
14 driver trying to get on as a -- as a
15 contractor, or do you know?
16 **A.** I don't know what his status
17 was. All I know is that from what I knew
18 from Kent and talking to Isaac that that
19 route had been offered to him, and he was
20 in the feeling it out to see if he wanted
21 to accept it. And Kent could never
22 actually pin him down, and I even made
23 reference to Kent. Kent, I'll take the

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1 route.
2 **Q.** Did you at any point in
3 time -- did at any point in time Kent ask
4 you if you were interested in the route
5 and you initially told him, no, you
6 weren't, the route in Troy?
7 **A.** I never told him that I was
8 not interested in the route, but
9 preferably I was interested in close to
10 home, the Elmore County/Wetumpka route,
11 because I had --
12 **Q.** But didn't he at some point in
13 time ask you if you were interested in
14 taking the Troy route and you declined,
15 said you really weren't interested in it?
16 **A.** No, sir, because I inquired
17 through -- through Dodge Vans about
18 buying a Sprinter van to run that route.
19 And they sent me brochures.
20 **Q.** Isn't that because you changed
21 your mind a week or two later and came
22 back and said you might be willing to
23 consider it?

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1 **A.** I was willing to take whatever
2 route they was willing to give me.
3 **Q.** You weren't being picky in
4 March?
5 **A.** Picky?
6 **Q.** Yes.
7 **A.** No.
8 **Q.** You didn't tell him at one
9 point in time that you were not
10 interested in Troy?
11 **A.** I told Kent that I was
12 interested in Wetumpka, if I had a choice
13 in the matter, but if I did not have a
14 choice in the matter, I would take the
15 Troy route. If I was not interested in
16 it, I would have never inquired about a
17 van and talked to Chad Primus about even
18 financing a van.
19 **Q.** People change their minds
20 every day.
21 **A.** Sure, sure, sure.
22 **Q.** You didn't go through a change
23 of heart on this?

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1 **A.** No, I -- I left it open as an
2 option.
3 **Q.** And I guess you've already
4 said that Mr. Scott had been working for
5 a period of weeks, I take it, as a
6 temporary driver down there --
7 **MR. NELMS:** Object to the
8 form.
9 **Q.** -- in Troy. Was that -- was
10 that your understanding of what he was
11 doing?
12 **A.** I have no idea. All I know is
13 Isaac was running the route. I don't
14 know if he was a temp -- I don't know if
15 he -- I don't even know what -- I know
16 nothing about Isaac except he got in that
17 van every day and he headed toward Troy.
18 **Q.** Okay.
19 **A.** If he had been through the
20 training process or not, I don't know.
21 **Q.** Okay.
22 **A.** I do not know.
23 **Q.** Do you recall having a

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1 conversation with Kent where he explained
2 to you why he had given the Troy route to
3 Isaac?
4 **A.** No, Isaac was already on that
5 route when I came back from Birmingham
6 training.
7 **Q.** I mean, giving him a -- giving
8 him a contractor position on that route,
9 not just driving it, but as a contractor?
10 **A.** The only thing I know from
11 Kent concerning Isaac is that Kent could
12 not pin the boy down and that he relayed
13 to me that he was having problems getting
14 financing on a van. And when he would go
15 to him and say Isaac, what are your
16 plans, what are your plans, are you going
17 to take this route, he never would give
18 him an answer. That's all I know.
19 **Q.** Did Mr. Gastineau ever talk to
20 you about the possibility that something
21 might open up in Elmore County depending
22 upon, you know, how things played out
23 with Mr. Pettaway?

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1 **A.** It was already open in Elmore
2 County. Kent didn't want Pettaway to get
3 the Wetumpka route because Pettaway was a
4 problem. He didn't keep his records on
5 his truck. He was just a problem all the
6 way around.
7 **Q.** What other kind of problems
8 other than records?
9 **A.** I don't know. All I know is
10 maintenance on the truck and such as
11 that. I mean, I can't recall every --
12 every conversation we had, but he did not
13 want him to get that route. And he
14 suggested that I go and get my map book.
15 Why would I go to the --
16 **MR. NELMS:** Just answer his
17 questions.
18 **A.** Okay.
19 **Q.** And how was it that Mr.
20 Pettaway was going to get this route?
21 **A.** I don't know.
22 **Q.** Was he going to be able to
23 expand his core territory or something

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1 along those lines?
2 **MR. NELMS:** Object to the
3 form.
4 **Q.** Did you have any understanding
5 of that?
6 **MR. NELMS:** Object to the
7 form.
8 **A.** I don't know. I don't know
9 the procedure for getting an extra route.
10 **Q.** Now, you said that you
11 understood that there was a route open
12 over there in Elmore County. Who told
13 you that?
14 **A.** Stan Trott.
15 **Q.** I'm talking about in your
16 conversations with -- is it -- did Kent
17 tell you that?
18 **A.** Stan Trott told me that it was
19 open in the beginning.
20 **Q.** Right.
21 **A.** And it was just the same way
22 with Kent. That was open.
23 Elmore/Wetumpka, that area was open,

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1 36116 was open.

2 Q. You keep referring to 36116.

3 A. That's in Montgomery. That's
4 a Montgomery route.

5 Q. And who was working that
6 route?

7 A. My understanding, nobody. It
8 was just being filled in.

9 Q. Temporary drivers were working
10 it?

11 A. From what I understand, there
12 was ground drivers doing home delivery
13 service out there.

14 Q. Okay.

15 A. So, I mean, I didn't know all
16 the ins and outs, you know. I took them
17 for what -- their word.

18 Q. Well, that's what I'm trying
19 to understand, precisely what it is that
20 Kent told you was the situation in Elmore
21 County, which is apparently what you said
22 you were really interested in.

23 A. He told me that the Wetumpka

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1 route in Elmore County was open, that I
2 needed to go to and purchase my map book.
3 I went and purchased my map book.

4 Q. And that cost you how much
5 money?

6 A. That was \$25.

7 Q. Yes.

8 A. He showed me actually a map
9 book, what it looked like, and how it was
10 gridded out from the 911 people. I went
11 directly up there. I purchased it for
12 \$25.

13 Q. And you got that from the
14 police department?

15 A. It was not in the police
16 department. It was emergency management
17 office.

18 Q. What discussions did you have
19 with Kent Gastineau about the route in
20 Montgomery that you described just a
21 moment ago?

22 A. We didn't have --
23 MR. NELMS: 36116?

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1 Q. Yeah.

2 A. The only discussions that we
3 had was that I was available for either,
4 and Isaac was still on the board. We
5 didn't discuss that one that much because
6 we knew what I was leaning toward. So,
7 we discussed the Wetumpka route more than
8 anything. We even went on the computer,
9 and he pulled it up on the computer and
10 showed me an outline of the territory
11 there, where it went, into what -- next
12 to what county, you know, it bumped up
13 against and everything.

14 Q. Did you doubt that he was
15 trying to do what he could to give you a
16 hand and get you into that route?

17 A. I never doubted Kent for one
18 moment. I thought the man was telling me
19 the truth. I mean, I was excited about
20 it.

21 Q. Okay.

22 MR. NELMS: Can we take a
23 minute?

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1 MR. SPOTSWOOD: Yeah, sure.
2 (Said deposition was in recess
3 at 2:42 p.m. until 2:50 p.m.,
4 after which the following
5 occurred:)

6 Q. (BY MR. SPOTSWOOD:) Your
7 complaint says that Kent Gastineau met
8 with you on April the 19th of 2005,
9 quote, to sign the contract for Elmore
10 County, and that Mr. Gastineau said --
11 stated, and I'm quoting from the
12 complaint, quote, stated that there was a
13 paperwork problem but that the route
14 belonged, close quote, to you. Is that
15 what he said to you?

16 A. Yes, sir.

17 Q. And you remember that
18 specifically?

19 A. Yes, sir, I do.

20 Q. What was the paperwork
21 problem?

22 A. I don't have a clue what the
23 paperwork -- there were so many paperwork

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1 problems, that was one of the main
2 issues, what -- why is there so many
3 paperwork problems? I was always
4 addressing that, always, why --
5 **Q.** Well, try to focus on my
6 question here. This is apparently an
7 important meeting. You've quoted it in
8 the complaint, April 19th. You said
9 there was a paperwork problem, but the
10 route belonged to you. What specifically
11 did he tell you -- I can see that you
12 were upset about that. What did he tell
13 you?

14 **A.** Basically it was out of his
15 hands, and it had went up the chain of
16 command, and several people had to sign
17 off on that, and it was up the chain.

18 **Q.** Okay. Did he give you any
19 specific explanation for what might have
20 happened or --

21 **A.** No, sir, he did not.

22 **Q.** All right. Did he give you
23 any assurances or say anything to you

1 Exhibit V?

2 **A.** No, sir, I do not. My
3 understanding was all my documents -- I
4 don't even know what I was supposed to be
5 signing off on that day, but I do know
6 that my other documents were actually in
7 other people's hands to be signed off on
8 because I know that there was a
9 procedure. Omar stated that to me. And
10 he pulled it up on his file saying
11 Charlie will sign off here, here, here
12 and here. I'm just going by what they
13 tell me.

14 **Q.** The complaint says that Mr.
15 Gastineau gave you, quote, an official
16 route book. Is that the book you went
17 off and -- what are you talking about
18 there, the book -- what's the official
19 route book?

20 **A.** I have no idea what the
21 official route book, what that's
22 pertaining to.

23 **Q.** Okay. Well, it's your

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1 about his hope to get it worked out in
2 the future?

3 **A.** No, he never used that
4 terminology.

5 **Q.** What did he say to calm your
6 nerves, if anything?

7 **A.** It was just a time, time
8 factor, being on someone's desk. Omar
9 Newman's desk had to sign off on it, and
10 there were some other individuals that
11 had to sign off on it, and they just --
12 just in passing had not signed off on it.

13 **Q.** On April the 19th, did he sit
14 down at the computer and attempt to print
15 off a contract for you, do you know?

16 **A.** No, there was a time on the
17 computer that we were trying to get some
18 type of document, and we couldn't access
19 it through the computer.

20 **Q.** Do you know whether or not
21 that document was, in fact --

22 **A.** No, I do not.

23 **Q.** -- the contract that's here in

1 complaint. I know you didn't write it.

2 **A.** Maybe it was the map book.

3 **Q.** Is that what you think you're
4 thinking about as the official route
5 book, perhaps?

6 **A.** Possible.

7 **Q.** Okay. The complaint says and
8 at this time you were, quote, encouraged
9 to continue working toward preparing for
10 the time when he would work the Elmore
11 County route. That's a quote out of your
12 complaint. Is that what he said to you?

13 **MR. NELMS:** That's terrible
14 language. Whoever wrote that needs to --

15 **Q.** Did he give you some words of
16 encouragement to hang in there for a
17 while?

18 **A.** Sure. He did. Exactly -- he
19 surely did, I mean. And it may have been
20 coming to him down the chain. It was all
21 a paperwork issue. From Jeff White on
22 up.

23 **Q.** You -- I think your van might

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1 have arrived or did arrive on the
2 premises on May the 3rd, does that sound
3 right to you?
4 A. It's possible. I don't really
5 recall the exact date.
6 Q. Whatever date the van arrived,
7 did Mr. Gastineau attempt to print out a
8 contract for you to sign in the form
9 contained in the book here, Exhibit V?
10 A. I do not recall that.
11 Q. Did he tell you the day that
12 your van arrived, though, that the
13 computer system would not give him
14 approval for a contract and a route?
15 A. No, sir.
16 Q. He didn't tell you that?
17 A. No, sir.
18 Q. What did he tell you that day?
19 A. He called me and told me the
20 van had arrived.
21 Q. Yes.
22 A. I went to the terminal. He
23 went out and done the maintenance check

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1 on the van, checked it over. I told him
2 I was taking it home, I was going to have
3 a radio installed, wash it, be ready to
4 go. He gave me a start date.
5 Q. What was the start date?
6 A. It was the Tuesday after
7 Mother's Day.
8 Q. Tuesday after Mother's Day?
9 A. I don't recall the date.
10 Q. But as of May the 3rd, you had
11 no hint there was going to be any problem
12 or that there was a problem at that time?
13 A. Paperwork problem.
14 Q. You did know on the 3rd when
15 the van arrived there was still paperwork
16 problems, correct?
17 A. No. No.
18 Q. You didn't?
19 A. I did not. Because I knew
20 that I had not -- the van had been
21 issued, and the issuance of the van would
22 not have taken place if there was a
23 paperwork problem.

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1 Q. Okay. And who told you that?
2 A. I knew that FedEx would not
3 issue a van with a contractor ID number,
4 DOT number, unless the chain of command
5 at FedEx had not signed off on
6 everything. Chad Primus at Stearns Bank,
7 which he had been doing this for years,
8 and I knew that that's what it would
9 take.
10 Q. Because Chad told you that or
11 somebody else did?
12 A. No, I knew that. I mean, I
13 just knew that through Kent probably, I
14 knew that they would not issue -- why
15 would a company issue you a van unless
16 everything was A-okay?
17 Q. I would suspect that would be
18 an error, yes, sir.
19 A. Okay.
20 Q. Let's talk about the van
21 purchase. I need the documents
22 reflecting the purchase and sale of the
23 van. Where are those documents? I don't

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1 know that we've ever seen any documents
2 dealing with the sale of the van.
3 MR. SPOTSWOOD: That's
4 correct. Those are exhibits --
5 MR. SPOTSWOOD: Hang on. Let
6 me just go off the record here for a
7 second.
8 (Off-the-record discussion.)
9 Q. (BY MR. SPOTSWOOD:) Pull
10 Exhibit H out for us, if you would, Andy.
11 (Whereupon, Defendant's
12 Exhibit H was marked for
13 identification.)
14 Q. Let's look at the second page
15 of Defendant's Exhibit H, which is the --
16 appears to be a conditional sales
17 contract with Stearns Bank. Is that your
18 signature on the bottom of the pages, on
19 the first two pages of that three-page
20 contract?
21 A. Yes, sir, it is.
22 Q. And, then, we have your
23 signature -- those are your initials on

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1 your first two. Then we have your
2 signature on the last page, is that
3 right?
4 A. Yes, sir.
5 Q. How much money did you sell
6 the -- first let me stop and ask this
7 question of counsel.
8 MR. SPOTSWOOD: To this day I
9 have not seen any documents dealing with
10 the sale of the van.
11 MR. NELMS: Do you have any
12 documents dealing with the sale of the
13 van we don't have?
14 A. No, sir, other than in that
15 packet.
16 Q. (BY MR. SPOTSWOOD:) Let me
17 ask you a question. Did you do any
18 paperwork in connection with the sale of
19 the van?
20 A. Sure, Chad Primus, he worked
21 everything up and sent me the paperwork
22 to sign off on it, and I signed it back
23 to him.

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1 Q. Did you keep a copy of that?
2 A. All the copies I had, I gave
3 to them, to Andy. I'm pretty sure that I
4 did.
5 MR. NELMS: Now, I've -- let's
6 go off the record.
7 (Off-the-record discussion.)
8 Q. (BY MR. SPOTSWOOD:) Let me
9 ask you this, Mr. Thornton. I know we
10 don't have apparently the documents
11 reflecting the sale of the van. Do you
12 recall, as we sit here today, what the
13 terms of the sale were?
14 A. My terms?
15 Q. Yeah, what -- what did -- what
16 did --
17 A. He assumed payments on it. He
18 just assumed the van, the payments on the
19 van.
20 Q. Okay. So, you didn't get
21 any cash back from -- that you had
22 fronted for the down payment or title
23 or --

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1 A. Tag, no, sir.
2 Q. -- or tag or any of that?
3 A. I did not.
4 Q. And what happened -- what
5 happened to the radio, did he purchase
6 the radio?
7 A. He purchased the radio.
8 Q. He did purchase the radio?
9 A. Yes, sir. The day he picked
10 it up he purchased the radio and --
11 Q. Did he pay you what you had
12 paid for the radio?
13 A. Yes, sir, he did. Him and --
14 I don't remember the fellow's name, but
15 him and his -- Tony DeRosa, Tony brought
16 him down to the home, and they picked it
17 up.
18 Q. Tony was the manager up there
19 in Anniston?
20 A. Anniston, yes.
21 Q. Do you remember the guy's name
22 who bought it?
23 A. No, sir, I do not remember.

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1 (Off-the-record discussion.)
2 (Whereupon, Defendant's
3 Exhibit AA was marked for
4 identification.)
5 Q. (BY MR. SPOTSWOOD:) Mr.
6 Thornton, is this -- you tell me what
7 this is.
8 A. Okay. This was the down
9 payment on the truck.
10 Q. What are we looking at there?
11 Did you charge that to a credit card?
12 A. Yes, sir, I did.
13 Q. What credit card did you
14 charge it to?
15 A. It was my Visa, National Bank
16 of Omaha.
17 Q. All right. And the amount of
18 the down payment on the van was the
19 1,029.50?
20 A. Yes, sir.
21 Q. And that was a postdate of
22 April the 22nd, correct?
23 A. Correct.

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1 Q. And that's -- we've been
2 talking about Exhibit AA, I believe.
3 (Whereupon, Defendant's
4 Exhibit BB was marked for
5 identification.)
6 Q. I'm now going to ask you to
7 identify Exhibit BB.
8 A. This is actually a renewal
9 notice that I received not too awfully
10 long -- well, received 10/3/05 on the --
11 on the tag of the van.
12 Q. So, this is not something that
13 you had actually paid then, I take it?
14 A. No, sir, I did not pay it. I
15 just put it in there.
16 (Whereupon, Defendant's
17 Exhibit CC was marked for
18 identification.)
19 Q. Exhibit CC, is this the sales
20 receipt for the --
21 A. Radio.
22 Q. -- radio?
23 A. Right.

1 sure that I understand how this works.
2 You obviously paid upon the purchase
3 state tax, county tax, city tax, total
4 sales tax of \$1,351.88, correct?
5 A. Yes, sir.
6 Q. And you got no reimbursement
7 at all from the transaction with the
8 new --
9 A. None, no, sir.
10 Q. So, this was an out-of-pocket
11 expense for you?
12 A. Yes, sir.
13 Q. All right. I am marking this
14 back of this receipt as Defendant's
15 Exhibit EE.
16 (Whereupon, Defendant's
17 Exhibit EE was marked for
18 identification.)
19 Q. It is a receipt from Harbor
20 Freight Tools, listing a hand truck and a
21 lashing, ST. I'm not sure what that
22 means. What are these items?
23 A. It's a hand truck that I

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1 Q. Is that correct?
2 A. Yes, sir.
3 Q. And the buyer whose name we
4 haven't figured out quite yet reimbursed
5 you in total for the three thirty-five oh
6 four?
7 A. Yes, sir.
8 (Whereupon, Defendant's
9 Exhibit DD was marked for
10 identification.)
11 Q. I'm going to show you
12 Defendant's Exhibit DD. This is the
13 registration certificate, is it not, for
14 the van?
15 A. Yes, sir.
16 Q. And it reflects a total tag
17 and tax payment and title fee of
18 \$1,533.35?
19 A. That's correct.
20 Q. And now, did you get any kind
21 of a refund for any of this amount?
22 A. No, sir.
23 Q. Was this -- frankly, I'm not

1 purchased for the truck to use on the
2 truck for delivery.
3 Q. And the lashing, what was
4 that?
5 A. That was just to strap it into
6 the truck where it wouldn't be moving
7 around.
8 Q. Was this an out-of-pocket
9 expense that you had, \$29.68?
10 A. Yes, sir.
11 Q. Okay. I'm not going to mark
12 this. I'm seeing a receipt here. You
13 apparently paid on your credit card for
14 the tag amount of 153335.
15 A. Let's see if that was a credit
16 card or a debit. Yeah, it was credit.
17 It was credit.
18 Q. All right.
19 MR. NELMS: Can we staple that
20 to the --
21 MR. SPOTSWOOD: Yeah, that's
22 fine.
23 MR. NELMS: That way --

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1 MR. SPOTSWOOD: We'll just
2 make that a part of Exhibit DD.

3 MR. NELMS: Does that read
4 okay with you?

5 COURT REPORTER: Yes.
6 (Off-the-record discussion.)
7 (Whereupon, Defendant's
8 Exhibit FF was marked for
9 identification.)

10 Q. (BY MR. SPOTSWOOD:) I've
11 marked this one Exhibit FF, which are
12 documents that we received from you
13 today, and it is a variety of different
14 documents. I just want to walk through
15 them with you if I can. The first page
16 is a bill of sale from FedEx Ground to
17 you for the Workhouse, correct?

18 A. Yes, sir.

19 Q. And it shows the selling price
20 of \$33,797, correct?

21 A. Correct.

22 Q. All right. The next page is
23 an insurance identification card that

1 Insurance Company additional insured
2 endorsement that names FedEx Ground as
3 named insured and additional insured,
4 Charlie Thornton, correct?

5 A. Correct.

6 Q. The cover page of the
7 insurance?

8 A. Correct.

9 Q. Correspondence is the next
10 page from Protective to you regarding --
11 basically providing proof of coverage.

12 The next document is a
13 Department of Revenue permit basically
14 for operation of the vehicle before the
15 title comes through, correct?

16 A. Yes, sir.

17 Q. The next document is just an
18 envelope from Protective. All right.
19 Correct?

20 A. Yes, sir.

21 (Whereupon, Defendant's
22 Exhibit GG was marked for
23 identification.)

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1 shows insurance on the vehicle effective
2 4/16/05 and expiring 2/1/06, correct?

3 A. Correct.

4 Q. I take it you did cancel the
5 policy immediately when you sold the van
6 to the -- whoever it was you sold it to?

7 A. Yes, I contacted them and let
8 them know. They still sent me a notice,
9 though.

10 Q. Did you ever pay any insurance
11 premiums on it?

12 A. No, not after -- not after
13 that.

14 Q. I guess my question in part
15 is, did you pay any premiums ever for
16 insurance? They might have billed you
17 after the fact, in which case maybe you
18 didn't pay the bill. I just don't know.
19 That's what I'm asking.

20 A. I can't recall. I really
21 can't recall. I had to pay something to
22 get the insurance.

23 Q. And this is a Protective

1 Q. Mr. Thornton, I'm showing you
2 Defendant's Exhibit GG, which I believe
3 is an application for the insurance
4 coverage that you purchased which
5 consisted of a life insurance policy as
6 well as a disability insurance policy.

7 A. Right.

8 Q. Life insurance paying off
9 almost \$51,830, and then the disability
10 coverage providing you 750 -- \$730 a
11 month in disability benefits, correct?

12 A. Correct.

13 (Whereupon, Defendant's
14 Exhibit HH was marked for
15 identification.)

16 Q. What I've got marked as
17 Exhibit HH is a cover page from
18 Protective Insurance, a certificate of
19 group independent contractor work
20 accident insurance effective 4/26/05, and
21 then the actual policy group independent
22 contractor work accident insurance
23 certificate, which is several pages. Is

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1 this all material that you received
2 from --
3 A. Yes, sir.
4 Q. -- Protective in connection
5 with your vehicle?
6 (Whereupon, Defendant's
7 Exhibit II was marked for
8 identification.)
9 Q. Let me show you Exhibit II.
10 Is this a letter you received from Chad
11 Primus, the account manager at Stearns,
12 dated April 15th?
13 A. Yes, sir.
14 Q. It appears to ask you to
15 return various documents and execute them
16 along with a check payable to Stearns for
17 \$967.50?
18 A. That's correct.
19 Q. And that includes an advance
20 payment of \$668?
21 A. Correct.
22 Q. And documentation fee of
23 \$299.50?

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1 A. That's correct.
2 Q. Now, is that -- is that the
3 out-of-pocket costs you incurred in
4 connection with this van separate from --
5 A. Yes.
6 Q. -- any insurance-related
7 issues?
8 A. Yes, sir.
9 Q. Okay. And you paid that money
10 by, I take it, a check?
11 A. No, that was with a credit
12 card.
13 Q. Was it?
14 (Whereupon, Defendant's
15 Exhibit JJ was marked for
16 identification.)
17 Q. All right. And Exhibit JJ is
18 a letter from you dated May 6th -- I'm
19 sorry, from Stearns Bank, the customer
20 service department, to you dated May 6th,
21 2005?
22 A. Yes, sir.
23 Q. And that tells you about

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1 payments, insurance and taxes?
2 A. Yes, sir.
3 Q. And it advises you that your
4 next payment is due 5/25/05?
5 A. Correct.
6 Q. And I think these documents
7 that we've just been through were mailed
8 in this envelope, if I'm not mistaken.
9 Do you know?
10 A. Yeah, flip that up and you can
11 tell what.
12 Q. Okay. So, these --
13 A. Yeah, those are.
14 (Whereupon, Defendant's
15 Exhibit KK was marked for
16 identification.)
17 Q. The insurance documents came
18 in this envelope --
19 A. Correct.
20 Q. -- is that correct? And
21 that's Exhibit KK. And that's got a
22 postmark of May 2nd on it, correct?
23 A. Yes.

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1 Q. I'm not going to mark that.
2 (Whereupon, Defendant's
3 Exhibit LL was marked for
4 identification.)
5 Q. Exhibit LL is your money
6 receipt for the map book you described in
7 the amount of \$25?
8 A. That's correct.
9 Q. I haven't been keeping up with
10 the numbers here, but do you know what
11 this Regions receipt relates to? It's in
12 the amount of 1351.88?
13 A. I don't. I can find that out,
14 though.
15 Q. Okay. If you could find
16 out --
17 A. I know it has something
18 pertaining to something, or it wouldn't
19 be in there. I don't know.
20 Q. If you can figure that out and
21 let me know in the morning, that would be
22 good.
23 (Off-the-record discussion.)

61 (Pages 241 to 244)

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1 (Whereupon, Defendant's
2 Exhibit MM was marked for
3 identification.)
4 Q. (BY MR. SPOTSWOOD:) I'll show
5 you Defendant's Exhibit MM which is a
6 two-page handwritten note here. Can you
7 tell me what this reflects?
8 A. (Examining document.) It's
9 just an itemized statement of expenses
10 going to training.
11 Q. Were you reimbursed by FedEx
12 for those expenses?
13 A. No, sir.
14 Q. What do they consist of?
15 A. Oil, gas, lunch, gas, shoes I
16 bought.
17 Q. So, you were basically keeping
18 those for tax purposes to keep up with
19 your expenses in connection with --
20 A. I really don't know how -- I
21 know my wife wrote this out because
22 actually this is showing an automatic
23 deposit of where they paid me right here.

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1 That's a deposit. I was -- that's an
2 auto -- automatic deposit there.
3 Q. I see.
4 A. There's no amounts there, so I
5 don't know what -- the only thing it's
6 showing that I -- I don't know why she
7 just put something there, the 5878, and
8 this is just scribble on the back.
9 Q. All right. On the 19th of May
10 you wrote Kent a letter, correct?
11 A. That's correct.
12 Q. And is that letter shown on
13 the second page of Defendant's Exhibit M?
14 A. That's correct.
15 (Whereupon, Defendant's
16 Exhibit M was marked for
17 identification.)
18 Q. And you enclose with that
19 letter the first page of Exhibit M?
20 A. That's correct.
21 Q. Was the -- did you also
22 enclose with the letter the document
23 that's marked KG 003 so that he would

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1 know -- which appears to be the address
2 to which the payments should be sent?
3 A. Correct.
4 Q. So, these three documents
5 consisted of your communication -- your
6 written communication with Kent?
7 A. Right. I mailed it to his
8 home.
9 Q. All right. Did you mean what
10 you said here in this letter?
11 A. I surely did. That was our
12 conversation.
13 Q. Did he ask you when -- when he
14 had indicated that he would take care of
15 making the payment that was due on the
16 25th, did he ask you not to tell anybody
17 about that because he might get into some
18 trouble about it?
19 A. Yes, sir.
20 Q. Did he explain to you why he
21 might get into some trouble about it?
22 A. No, he did not explain it. He
23 just wanted it to be between us.

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1 Q. Did you keep it between the
2 two of you?
3 A. No, I did not.
4 Q. Who did you tell about it?
5 A. I told Jeff White.
6 Q. And who is Jeff White?
7 A. He's either an engineer or
8 Kent's boss.
9 Q. What did you say to Jeff about
10 it, or is that in that record -- one of
11 those recorded conversations?
12 A. It -- it may possibly be. I'm
13 not quite for sure. There's only one.
14 Q. I don't think you reached Jeff
15 that day.
16 A. Well, I spoke to Jeff about
17 it. I know I did. My main concern was
18 how that payment was going to be made,
19 and it wasn't being made, and I wanted to
20 know -- I'm a chain of command guy. I
21 mean, I'm going to go to him and then I'm
22 going -- if I can't get answers, go
23 above. And, so, I called Jeff.

62 (Pages 245 to 248)

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1 Q. Well, did -- when you called
2 Jeff, did you think that Kent was not
3 going to make good on his promise to make
4 the payment?

5 A. I wasn't sure if he was or not
6 because it was a situation that was not a
7 very nice situation for either party, and
8 I had already been appeased to the point
9 of it was ludicrous, and I just said I'm
10 not sure, but I knew somebody was going
11 to come after Charlie for the payment.

12 Q. So, what do you remember
13 saying to Jeff about the payment?

14 A. I really don't recall the --
15 the whole conversation. I mentioned it
16 to Jeff that my main concern was what is
17 going on with my paperwork, and I had a
18 payment due in X amount of weeks. And
19 someone was going to make that payment,
20 and I told him at the time that Kent --
21 Kent said that he would make the payment.

22 Q. And did it later turn out that
23 FedEx made that first payment?

1 maybe earlier than that, possibly the
2 18th. But your testimony today is that
3 you did talk to Jeff about this issue
4 after you wrote this letter to Charlie,
5 so I need some clarification there. Do
6 you think you might have told Jeff about
7 the commitment that Kent had made before
8 you actually wrote the letter to Kent?

9 A. I don't recall. I really
10 don't recall.

11 Q. Could it have been, though,
12 before you actually wrote the letter?

13 A. It's possible. It's possible.

14 Q. I tell you what I'd like to
15 do, I think, is take a break at this
16 juncture because I really need to spend
17 some time looking at this document, I
18 think.

19 MR. NELMS: Or we can just
20 start over in the morning, whatever you
21 want to do.

22 MR. SPOTSWOOD: Yeah, I mean,
23 it suits me to start in the morning if I

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1 A. I don't know who made the
2 payment, if anybody made the payment.
3 All I know is that Chad was able to find
4 somebody.

5 Q. And since that some person
6 just took over the payments, you're not
7 really sure how good a deal he got,
8 whether he got one payment better deal
9 than might otherwise be the case?

10 A. Well, I remember the
11 conversation with Chad, and it may be in
12 here.

13 Q. I think it is.

14 A. I don't remember the whole
15 conversation. The guy got a good deal.
16 I think he got a good deal anyway. But
17 Chad really helped me out with that
18 truck.

19 Q. Previously you had indicated
20 that you started recording conversations
21 with everyone you talked to at FedEx
22 beginning with the first conversation on
23 here, which we know is at least the 19th,

1 could take this with me. I'd actually
2 rather not take it with me, so let me see
3 if we can shoot a picture of this.

4 MR. NELMS: Yeah, give it here
5 and let me just get them to copy that off
6 real quick.

7 MR. SPOTSWOOD: Copy the
8 cover, too, if you don't mind.

9 MR. NELMS: Before y'all go
10 out tonight, let's make sure we have
11 everything in order.

12 MR. SPOTSWOOD: Sure,
13 absolutely.

14 (Whereupon, Defendant's
15 Exhibit NN was marked for
16 identification.)
17 (Said deposition was in recess
18 at 3:34 p.m. until 9:30 a.m.
19 on the morning of March 16th,
20 2006. All subsequent
21 testimony of Mr. Thornton is
22 contained in Volume II of his
23 Deposition.)

In The Matter Of:

CHARLIE THORNTON
v.
FEDEX GROUND PACKAGE SYSTEM

CHARLIE THORNTON
March 16, 2006



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<div>Page 253</div> <div> <div>IN THE UNITED STATES DISTRICT COURT</div> <div>MIDDLE DISTRICT OF ALABAMA</div> <div>NORTHERN DIVISION</div> <div>CIVIL ACTION NO: 2:05-CV-00656-DRB</div> <div>CHARLIE THORNTON,</div> <div>Plaintiff,</div> <div>vs.</div> <div>FEDEX GROUND PACKAGE SYSTEM, INC.,</div> <div>Defendant.</div> <div>VOLUME II DEPOSITION</div> <div>OF</div> <div>CHARLIE THORNTON</div> <div>16TH DAY OF MARCH, 2006</div> <div>TAKEN BEFORE: Gary N. Morgan</div> <div>Registered Professional</div> <div>Reporter and Notary Public</div> </div>	<div>Page 255</div> <div> <div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div> <div>A P P E A R A N C E S</div> <div>FOR THE PLAINTIFF:</div> <div>Mr. K. Anderson Nelms</div> <div>Attorney at Law</div> <div>Law Offices of Jay Lewis, LLC</div> <div>847 South McDonough Street</div> <div>P. O. Box 5059</div> <div>Montgomery, Alabama 36104</div> <div>FOR THE DEFENDANT:</div> <div>Messrs. Robert K. Spotswood and</div> <div>John. R. Parker, Jr.</div> <div>Attorneys at Law</div> <div>Law Offices of Robert K. Spotswood</div> <div>Suite 940</div> <div>2100 Third Avenue North</div> <div>Birmingham, Alabama 35203</div> <div>OTHERS PRESENT:</div> <div>Mr. Kent Gastineau</div> </div> </div>
<div>Page 254</div> <div> <div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div> <div>S T I P U L A T I O N</div> <div>IT IS STIPULATED AND AGREED,</div> <div>by and between the parties, through their</div> <div>respective counsel, that the deposition</div> <div>of CHARLIE THORNTON may be taken before</div> <div>Gary N. Morgan, Commissioner, Registered</div> <div>Professional Reporter and Notary Public,</div> <div>State at Large;</div> <div>That the signature to and</div> <div>reading of the deposition by the witness</div> <div>is waived, the deposition to have the</div> <div>same force and effect as if full</div> <div>compliance had been had with all laws and</div> <div>rules of Court relating to the taking of</div> <div>depositions;</div> <div>That it shall not be necessary</div> <div>for any objections to be made by counsel</div> <div>to any questions, except as to form or</div> <div>leading questions, and that counsel for</div> <div>the parties may make objections and</div> <div>assign grounds at the time of trial, or</div> <div>at the time said deposition is offered in</div> <div>evidence, or prior thereto.</div> </div> </div>	<div>Page 256</div> <div> <div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10</div> <div>11</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div> <div>I N D E X</div> <div>PAGE:</div> <div>EXAMINATION BY MR. SPOTSWOOD - 258</div> <div>CONTINUED</div> <div>EXAMINATION BY MR. NELMS 366</div> <div>REEXAMINATION BY MR. SPOTSWOOD 383</div> <div>EXAMINATION BY MR. NELMS - 385</div> <div>CONTINUING</div> <div>REEXAMINATION BY MR. SPOTSWOOD 401</div> <div>REEXAMINATION BY MR. NELMS 403</div> <div>REEXAMINATION BY MR. SPOTSWOOD 405</div> <div>REEXAMINATION BY MR. NELMS 409</div> <div>Exhibit OO 258</div> <div>Exhibit PP 261</div> <div>Exhibit QQ 262</div> <div>Exhibit RR 276</div> <div>Exhibit TT 284</div> <div>Exhibit SS 285</div> <div>Exhibit UU 287</div> </div> </div>

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I N D E X (Continuing)

Exhibit VV	316
Exhibit WW	330
Exhibit I	333
Exhibit J	334
Exhibit K	335
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Exhibit YY	363
Exhibit ZZ	382
Exhibit AAA	411

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information, the contract FedEx P500, that was the truck model, a P500. The 1.19 stop, I do not know what that is. For some reason, I wrote that down. But you can see I wrote under there lease to own, Chad, 72 months.
Q. And Chad is a reference to Chad Primus at Stearns Bank?
A. Yes, sir. Under that you'll see physical, Trice, okay. That was a young lady at the terminal. She was admin clerk.
Q. She was the person who helped you with the paperwork at the front end that you talked about yesterday?
A. Yes, sir. Yes, sir. And she was going to -- I'm pretty sure she may have set up my physical, and some of that writing under that is actually my wife's writing because she spoke to Chad about the purchase of the truck as far as interest rates and stuff like that, so that was conversation they had. And

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MARCH 16, 2006 9:35 A.M.
CHARLIE THORNTON,
having been previously duly sworn, was examined and testified further as follows:
EXAMINATION BY MR. SPOTSWOOD - CONTINUED:
(Whereupon, Defendant's Exhibit OO was marked for identification.)
Q. Let me ask you to have a look, Mr. Thornton, at Exhibit NN.
A. Okay. I've got it right here.
Q. Okay. Can you tell me what these are, please, sir?
A. Yes, sir. At the top that CFF basically is a -- there was two financing companies, one that pertained to the truck purchase. One was CFF. The other was Stearns Bank. Those are the phone numbers that I received. I do not know who I received them from. And the other

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which was the better of the two as far as the purchase. This out to the side --
Q. Yes, sir.
A. -- that's my wife's writing also.
Q. The 299.50 --
A. Yes.
Q. -- one month, 705?
A. Right.
Q. And so forth?
A. Yes, sir. It sure is. And let's see. Those directions that are under the bottom.
Q. Yes, sir.
A. I do not know where those directions are to. For some reason, I wrote those down Exhibit 255, Frankfurt. That -- for some reason, I had to take some directions for something, and I wrote it on there. Then below that is information on -- it's just references, Jeff Owens, Mike Proper and Ray Harris.
Q. Those are the three names that

2 (Pages 257 to 260)

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1 you listed on your application materials
2 as references --
3 **A.** Yes, sir.
4 **Q.** -- if I recall correctly?
5 **A.** That's correct. That just
6 looks like a copy of something. Okay.
7 (Whereupon, Defendant's
8 Exhibit PP was marked for
9 identification.)
10 **Q.** Just another little
11 housekeeping item here. Let me show you
12 what I'm going to mark as Defendant's
13 Exhibit PP, and this is the first five
14 pages of the Elmore County, Alabama E
15 9-1-1 map book.
16 **A.** Yes, sir.
17 **MR. NELMS:** Bob, do you want
18 me to stipulate that that's
19 representative of the entire --
20 **MR. SPOTSWOOD:** Yeah. I'll
21 get to that. This is the map book that
22 is -- I've got a multipage map book here.
23 I've only marked the first few pages as

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1 Exhibit PP, and I just want to confirm
2 that this is the map book that you talked
3 about yesterday for which -- which you
4 purchased for \$25 --
5 **A.** That's correct.
6 **Q.** -- in order to become more
7 familiar with the route that you had
8 hoped to receive in Elmore County?
9 **A.** That's correct.
10 **Q.** I want to show you Defendant's
11 Exhibit OO. Is this a FedEx home
12 delivery pamphlet titled The
13 Entrepreneurial Spirit that you received
14 in the course of seeking to become a
15 contractor?
16 **A.** Yes, sir.
17 (Whereupon, Defendant's
18 Exhibit QQ was marked for
19 identification.)
20 **Q.** I now want to turn to your
21 notes, and I know you have the originals
22 over there. Yesterday we made a copy of
23 your notes, and they are 20 pages long,

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1 if I remember correctly, and that's
2 Defendants QQ. As far as I'm concerned,
3 since your counsel made these copies for
4 me, I think we're on the same page that
5 I've got a complete set here.
6 First of all, can you identify
7 Exhibit QQ as a true and correct and
8 accurate copy of handwritten notes that
9 you and your lawyer produced to us
10 yesterday?
11 **A.** Yes, sir.
12 **Q.** A couple of general questions
13 first about these. This is a time line,
14 the first entry on the first page says
15 time line. When did you actually make
16 these notes? And let me be very precise
17 here. Did you make these notes on the
18 dates that are indicated here?
19 **A.** No, sir. I did not.
20 **Q.** Do you recall when, then, did
21 you actually make these notes?
22 **A.** The exact date, no, I don't
23 recall. It was after Andy and I had our

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1 conversation as far as my rights, and
2 Andy told me what to do because I didn't
3 know what to do.
4 **Q.** Okay. So, it was sometime,
5 I'm going to guess, within the last week
6 of May 2005 given that the lawsuit was
7 filed --
8 **A.** Either May or June, the first
9 of June, yes.
10 **Q.** Was it before or after your
11 complaint was actually filed, do you
12 remember that, because that was filed on
13 the 25th of May, I believe?
14 **A.** I don't recall.
15 **Q.** Did you use some materials to
16 reconstruct the time line and information
17 that was here, other notes, or was it
18 basically your recollection of events?
19 **A.** It was my recollection. Yes.
20 **Q.** Okay. And I know that we've
21 already marked and identified -- it's
22 actually Exhibit N, a transcription of
23 your history, I guess, at FedEx Ground.

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1 Was this prepared before or after you
2 made the verbal history that's before us
3 as Exhibit N, if you remember?
4 **A.** I don't really recall if it
5 was before or after.
6 **Q.** All right.
7 **A.** It may have been around the
8 same time because it's possible it was
9 very close to the same -- both of them
10 were close to the same time. I don't
11 recall which was which. I know I -- I
12 just don't recall.
13 **Q.** On the first page, second
14 paragraph, there's a note, first or
15 second week Jan. Is that your
16 handwriting?
17 **A.** All of this is my handwriting.
18 **Q.** All right. On page six, the
19 second sentence beginning "the last day,"
20 I'm just unclear -- there's an
21 interlineation of the word Joe, and I'm
22 just unclear exactly what this means. As
23 I read it, it says, "The last day of

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1 class or the day before, I met Joe 2 or
2 the 3rd, and we talked about Montgomery
3 and the areas that are open." Do you see
4 that there?
5 **A.** Yes.
6 **Q.** I just don't understand
7 what -- what's being referenced there by
8 2 or the 3rd.
9 **A.** That's the second or -- I
10 don't recall what I meant, whether it was
11 the 2nd or the 3rd of the month or the
12 second or the third meeting I had with
13 him.
14 **Q.** And this is -- this particular
15 entry, if you flip over to the prior
16 page, is for a time period February 1
17 through 10, correct, when you were given
18 your training in Birmingham?
19 **A.** Yes. So, it must have been --
20 that must have been a date. I would
21 assume that it would be a date, 2nd or
22 3rd.
23 **Q.** And you're talking about Joe

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1 McConnell there?
2 **A.** Yes, sir, I am.
3 **Q.** And over to the next page,
4 which is a reference to February 8th, is
5 the reference there on the third line, "I
6 met with Joe." That's Joe McConnell
7 again?
8 **A.** Yes, sir.
9 **Q.** And he introduced you to Kent
10 Gastineau?
11 **A.** That's correct.
12 **Q.** And that was the first date on
13 which you had ever met Kent, is that
14 correct?
15 **A.** That's correct.
16 **Q.** Let me call your attention
17 several pages forward in your notes there
18 to February the 15th, Tuesday.
19 **A.** Yeah.
20 **Q.** Is it correct on that day, and
21 this is what it says, you and Jermaine
22 ran the Troy route?
23 **A.** We ran the -- yes, sir, we

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1 did. We actually ran the -- the royal --
2 the rural part of the -- part of the
3 route there.
4 **Q.** What was that route? Did it
5 actually go all the way down into the
6 city of Troy, Alabama and the surrounding
7 counties or what?
8 **A.** It went into the -- that
9 particular day it was the surrounding
10 counties and some of the outlying small
11 towns. I don't recall the -- remember
12 the names of the towns, but it wasn't
13 directly inside the city. It was on the
14 outskirts.
15 **Q.** Is that route contiguous to a
16 route that serves Montgomery County, or
17 was there something in between those two
18 routes?
19 **A.** No. My best recollection, it
20 is part of Montgomery County also because
21 I'm thinking it was Pike Road, the
22 Matthews area, and I believe they are in
23 Montgomery County.

4 (Pages 265 to 268)

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1 Q. And then you go south from
2 there all the way down to Troy?
3 A. Yes, sir, and outlying areas.
4 Q. The next sentence here says,
5 "The fellow that ran this route was out
6 sick, which at this time the Troy route
7 had not been assigned to anyone
8 permanently." And that was Isaac Scott
9 who was running it --
10 A. That's correct.
11 Q. -- regularly, wasn't it? You
12 then say here, "This route that we ran
13 was very rural and very long, and
14 Jermaine said they had a problem keeping
15 drivers on it."
16 A. That's correct.
17 Q. And you say, "We got lost
18 several times because of bad directions.
19 To say the least, it was not a positive
20 experience."
21 A. That's correct.
22 Q. And then you go on to say,
23 "Jermaine said he did not think that

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1 Isaac was sick. He felt that he was
2 getting tired of putting in 13- and
3 14-hour days, and he told me or said I
4 should not ask for this route."
5 A. That's correct.
6 Q. And that's, in fact, what
7 Jermaine said to you?
8 A. That's exactly right.
9 Q. And then the next day,
10 February 16th, you say here, "Isaac was
11 still out, so Kent asked me to run that
12 (sic) route and that I would not have to
13 run out of the town, that I would only
14 run inside the city, which that was okay
15 by me, but I also told him that morning
16 that if Isaac did not come back or quit
17 because no one could reach him, I would
18 take the Troy route, but I would prefer
19 Wetumpka or the Montgomery route over
20 Troy, and he said that he hoped Isaac
21 would be back."
22 A. Yes, sir.
23 Q. And when you wrote this down,

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1 this was sometime in late May, and it was
2 based on your recollection of your
3 discussions a couple of months
4 previously?
5 MR. NELMS: Object to the
6 form. Answer the question.
7 A. Yes, sir.
8 Q. You had no other notes to help
9 you recall exactly what was said between
10 you on this occasion?
11 A. No, sir, I do not.
12 Q. And you hadn't tape recorded
13 any of those conversations --
14 A. No, sir.
15 Q. -- that you -- you need to let
16 me finish.
17 A. I'm sorry.
18 Q. You hadn't tape recorded any
19 of the conversations that we've been
20 talking about or that are reflected
21 really at all on this exhibit?
22 A. No, sir.
23 Q. On the next page, you say

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1 here, "That morning -- which I take it is
2 a reference to February 16th -- "Kent and
3 I discussed my paperwork, and he said
4 everything that needed to be sent to
5 corporate had been sent to be signed off
6 on, and that it should only take a few
7 days." Correct so far?
8 A. Yes, sir.
9 Q. "I stated to him that was
10 great and that I did not want to be a
11 temp driver."
12 A. Correct.
13 Q. And then it says here in
14 parentheses, "Jermaine had said that if I
15 agreed to be a temp driver (sic) that
16 they would drag their feet and only pay
17 me minimum and not contractor pay,"
18 correct?
19 A. That's correct.
20 Q. That's what Jermaine had said
21 to you?
22 A. That's exactly right.
23 Q. And then you go on to say

5 (Pages 269 to 272)

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1 here, "But if at any time between now and
2 everything was approved, I will help him.
3 All he had to do was call, and Kent said
4 okay. He also felt Isaac was going to
5 take the Troy route."

6 **A.** That's correct.

7 **Q.** And, then, your notes go on to
8 talk about the unfortunate death of your
9 wife's mother?

10 **A.** Correct.

11 **Q.** So, you were basically --

12 **A.** Might I add one thing?

13 **Q.** Sure.

14 **A.** On this one I told Kent that I
15 would help him in any way possible. We
16 had discussions on, you know, if he was
17 shorthanded or whatever, and I made
18 several phone calls. As a matter of
19 fact, he told me that he may need me to
20 run some -- a route on a Saturday, and I
21 would call him like on Friday and, no, we
22 don't need you to do that. I was willing
23 to do anything, you know, because I was

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1 just waiting. I was in limbo.

2 **Q.** All right. Your notes reflect
3 that you were out of town February 17th,
4 through the 22nd, in connection with the
5 illness of your wife's mother, is that
6 correct?

7 **A.** Yes, sir.

8 **Q.** And then when you returned on
9 February 23rd, according to your notes,
10 you called Kent to let him know that you
11 were back in town. And among other
12 things, you, quote, asked about my
13 paperwork, and at that time he had not
14 heard anything. That was the report that
15 day?

16 **A.** Correct.

17 **Q.** And then on Thursday, the 24th
18 of February, you got the word that your
19 wife's mother had died, and you were
20 basically out of town from that day,
21 Thursday, the 24th, until the 28th of
22 February when you returned from
23 Tallahassee?

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1 **A.** Correct.

2 **Q.** On March the 1st, according to
3 your notes, you went to the terminal to
4 check with Kent and let him know that you
5 were home and see how things were going.
6 Correct so far?

7 **A.** Correct.

8 **Q.** And he said then that Kent --
9 I'm sorry. Strike that.

10 Your notes state the
11 following: "Kent stated to me that
12 Stan -- and that's a reference to Stan
13 Trott, correct?"

14 **A.** That's correct.

15 **Q.** -- "had not sent the correct
16 paperwork in at the beginning my process,
17 and he had to correct some items and that
18 he was sorry and that the paperwork had
19 gotten into the wrong hands, so it was
20 going to take some (sic) more time."
21 That's what Kent told you that day?

22 **A.** That's correct.

23 **Q.** You said -- I'm sorry. Strike

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1 that.

2 Continues, and he said -- "He
3 should know something in a few days, and
4 he would call me ASAP."

5 **A.** Correct.

6 **Q.** You go on to say -- and this
7 may have been what you were talking about
8 just a moment ago. "So, I told him to
9 let me know if someone did not show up to
10 call me, and he said okay. That day he
11 also gave me my ID badge which expires
12 (sic) 5/31/06, and he also gave me my
13 uniforms that came in," correct?

14 **A.** Yes.

15 (Whereupon, Defendant's
16 Exhibit RR was marked for
17 identification.)

18 **Q.** And the ID package in question
19 is what we've marked here as Exhibit RR?

20 **A.** Yes, sir, it is. You need
21 that back?

22 **Q.** Yes, sir. Thank you.

23 **A.** You also need this one.

6 (Pages 273 to 276)

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1 Q. Thank you. Let me go back to
2 the entries on February the 9th,
3 Wednesday, February the 9th, if you can
4 flip back to that.
5 A. Okay. All right.
6 Q. And this describes your -- I
7 guess your first day driving with
8 Jermaine Wilson. This is the beginning,
9 I think, of your driving certification
10 ride?
11 A. That's correct.
12 Q. So, this was your first day
13 with Jermaine?
14 A. Correct.
15 Q. And you state here, "During
16 our deliveries we talked about how the
17 terminal needs someone on this route
18 because they did not have a permanent
19 driver for this route, and it was stated
20 by Jermaine that the whole terminal was a
21 mess because of Ground running home
22 delivery and Home-D running ground." Is
23 that correct so far?

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1 A. That's correct.
2 Q. "But he hoped with Kent's help
3 they would get it fixed, and the biggest
4 problem was Stan, but he was to retire
5 soon." Correct so far?
6 A. Yes, sir.
7 Q. By correct, I mean that's a
8 correct statement of what Jermaine was
9 telling you?
10 A. Correct. Correct.
11 Q. What did you understand him to
12 mean in connection with home running
13 ground and ground running home? What did
14 you understand that to mean?
15 A. Well, you had -- you had the
16 ground side, and you had home delivery
17 side, and this is the way I interpreted
18 what he was saying because I had heard
19 things, not just that conversation, other
20 guys talking, that Stan has nothing to do
21 with -- with Kent, but Stan had guys on
22 the ground side delivering home delivery
23 packages and vice versa, and it was

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1 just -- it was just mixed up, and it's
2 not supposed to be run that way.
3 Q. What was your understanding of
4 how the work was to be divided?
5 A. Well, I was just at that time
6 getting a grasp on what packages were to
7 be delivered to what particular
8 customers, and I understood that home
9 delivery meant home delivery, you know,
10 to individuals' homes, and ground dealt
11 more with business. And you had guys
12 with ground delivering home delivery
13 packages and the home delivery delivering
14 ground packages. And it was -- and there
15 was favoritism. There was favoritism
16 because of Stan's being a ground guy, he
17 might give more packages to the ground
18 guys, and that's the way I interpreted
19 what he was saying.
20 Q. Okay. We then get into March
21 2nd, March 3rd, March 4th. On those
22 dates you did not hear anything from
23 Kent, is that correct?

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1 A. That's -- that's correct.
2 Q. And no conversations with
3 anyone at FedEx, I take it?
4 A. That's correct.
5 Q. Then we get over to March 5th,
6 Saturday and you had, according to this,
7 received a call from Jermaine "on
8 Saturday morning around 10:30 which he
9 left a message on the recorder asking if
10 I could come in and work for two hours,
11 that he could not deliver 20 to 30
12 packages." You didn't get that message
13 in time to respond is what I take it from
14 the sense of this?
15 A. Yes, that's correct.
16 Q. All right. You make one entry
17 here for March the 8th, Tuesday, through
18 March the 12th, Saturday. You say,
19 "During this week I heard nothing about
20 my paperwork. I made call to Kent and
21 expressed I needed to know something, and
22 all I got was the paperwork is getting
23 put together." What exactly did Kent say

7 (Pages 277 to 280)

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1 to you? Is that what he said?

2 **A.** Basically, yes, that's what he
3 said. And I think the paperwork at that
4 time was totally out of Kent's hands, and
5 it was up the chain of command.

6 **Q.** "I called Joe McConnell in
7 Birmingham at the terminal and expressed
8 to him that Kent did not seem to know
9 much about my paperwork, so I asked him
10 to check for me." Correct so far?

11 **A.** Yes, sir.

12 **Q.** "And he said he would, and he
13 was going to call Kent and have him call
14 me back. By the end of the week, nobody
15 had called me." Is that all correct?

16 **A.** That's correct.

17 **Q.** Did you have any substantive
18 discussion with Joe McConnell about what
19 was going on or why the paperwork had not
20 come through or any of that?

21 **A.** Well, Joe didn't know why
22 either, but he -- but I knew he was the
23 go-to man because Kent was new, and there

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1 was nobody else there to contact.

2 **Q.** And then we move into the next
3 week, Tuesday, March 15th, through
4 Saturday, March 19th. You state here,
5 "Again this week was making phone calls
6 to Kent and Joe." How many calls that
7 week did you make to Kent, if you can
8 remember?

9 **A.** I don't recall, but I didn't
10 want to make so many that I harassed him
11 because, I mean, it -- each time I made a
12 phone call, he really didn't know what
13 was going on.

14 **Q.** Right.

15 **A.** Neither did -- did Joe.

16 **Q.** It says here you "also called
17 Omar Newman, and Omar said that he had
18 already signed off on my paperwork." And
19 that's what he told you?

20 **A.** Yes, sir.

21 **Q.** Did he give you any assessment
22 or description of what the problem was or
23 what the hangup was?

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1 **A.** The only thing that Omar would
2 say was he didn't understand what was
3 taking so long. And I knew that he had
4 to sign off on the paperwork, and
5 basically it -- it was left at that. He
6 didn't know where else to go, but it left
7 his hands and went up another chain of
8 command.

9 **Q.** And then you say here, "So, I
10 was back at the starting line." That's
11 just an observation about your feelings
12 essentially?

13 **A.** That's correct.

14 **Q.** Then we move to Tuesday, March
15 22nd through Saturday, March 26th.
16 "During this week, calls were made to
17 Kent, and I still called Joe, and Chad
18 from Stearns Bank was wanting to know if
19 I knew anything." Let me stop there and
20 ask you what, if anything you recall
21 specifically about your conversation
22 with Kent -- conversations with Kent that
23 week.

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1 **A.** It was basically the same
2 conversation, Kent, have you heard
3 anything? Not yet, not yet, not yet.

4 **Q.** And the same for Joe --

5 **A.** Yes, sir.

6 **Q.** -- McConnell?

7 **A.** That's correct.

8 **Q.** This may be the first
9 reference I see here to Chad. Is this
10 when you first began talking with Chad
11 about financing on the truck?

12 **A.** No, sir. I had already been
13 approved, and it was just waiting in the
14 wings. Chad started calling me wanting
15 to know what was going on, and had I
16 heard anything about the approval.

17 **Q.** This is a little out of order
18 and stepping back some, but I'm going to
19 interject a couple of e-mails here.

20 (Whereupon, Defendant's
21 Exhibit TT was marked for
22 identification.)

23 **Q.** I just marked them out of

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<p>1 order too. Is Exhibit TT an e-mail that</p> <p>2 you sent to Omar Newman on February the</p> <p>3 23rd of 2005 about your status?</p> <p>4 A. (Examining document.) Yes,</p> <p>5 sir, it is.</p> <p>6 Q. And is Exhibit -- did you get</p> <p>7 any response to that? Did he e-mail you</p> <p>8 back, for example?</p> <p>9 A. I don't recall if he e-mailed</p> <p>10 me back or not.</p> <p>11 Q. Have you checked your e-mails</p> <p>12 for any e-mail correspondence about this</p> <p>13 matter?</p> <p>14 A. The only correspondence that I</p> <p>15 could find is what I've got right here.</p> <p>16 (Whereupon, Defendant's</p> <p>17 Exhibit SS was marked for</p> <p>18 identification.)</p> <p>19 Q. Let me ask you to look at</p> <p>20 Exhibit SS. Is this an e-mail that you</p> <p>21 sent to Omar on the 24th of February of</p> <p>22 2005?</p> <p>23 A. (Examining document.) Yes,</p>	<p>1 A. Correct.</p> <p>2 Q. And then you mentioned here</p> <p>3 "Chad at Stearns could not release</p> <p>4 financing to FedEx until all of my</p> <p>5 paperwork had been approved and a truck</p> <p>6 ID (sic) was given," right?</p> <p>7 A. Correct.</p> <p>8 Q. That's what he told you?</p> <p>9 A. Yes, sir.</p> <p>10 (Whereupon, Defendant's</p> <p>11 Exhibit UU was marked for</p> <p>12 identification.)</p> <p>13 Q. All right. I'm going to show</p> <p>14 you a document marked for identification</p> <p>15 as Exhibit UU. Is that an e-mail that</p> <p>16 you sent on March the 28th to Omar?</p> <p>17 A. Yes, sir, it is.</p> <p>18 Q. Take a second to look at that.</p> <p>19 A. (Examining document.) All</p> <p>20 right.</p> <p>21 MR. NELMS: I'm reading it.</p> <p>22 A. Okay. There you go.</p> <p>23 Q. You state here in the second</p>
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<p>1 sir, it is.</p> <p>2 Q. On this day -- I'm not sure</p> <p>3 what date this is because this is an</p> <p>4 entry under the whole week, but under the</p> <p>5 week -- under the entry for the week of</p> <p>6 March 22nd through 26th, you say --</p> <p>7 A. What week was that again? I'm</p> <p>8 sorry.</p> <p>9 Q. I'm still under the March 22nd</p> <p>10 through March 26th period.</p> <p>11 A. Yes, sir.</p> <p>12 Q. You say here Chad had called</p> <p>13 you, I take it, wanting to know if you</p> <p>14 knew anything?</p> <p>15 A. Correct.</p> <p>16 Q. And you said what?</p> <p>17 A. No.</p> <p>18 Q. And you also recite here,</p> <p>19 "Chad also called Kent to see what was</p> <p>20 going on, and Kent told Chad as soon as</p> <p>21 he heard the approval, he would --</p> <p>22 A. E-mail him.</p> <p>23 Q. -- e-mail him."</p>	<p>1 sentence, "I went into the terminal</p> <p>2 Saturday the 26th and picked up a P/D</p> <p>3 contractor business guide and talked to</p> <p>4 Kent." Is that correct? Is that what</p> <p>5 you did?</p> <p>6 A. Yes, sir.</p> <p>7 Q. And is the business guide that</p> <p>8 you're talking about Defendant's Exhibit</p> <p>9 V?</p> <p>10 A. Yes, sir, that's correct.</p> <p>11 Q. And, so, that would clarify</p> <p>12 that the date that you actually received</p> <p>13 that would have been on the 26th of</p> <p>14 March, Exhibit V?</p> <p>15 A. I assume that's correct.</p> <p>16 Q. And you apparently talked to</p> <p>17 Kent that day, and this is what the</p> <p>18 e-mail Exhibit UU states: "I know that</p> <p>19 you had already signed off my file</p> <p>20 several days, but he was saying that he</p> <p>21 had just received it on the 25th, so I</p> <p>22 did not say anything."</p> <p>23 And this was -- what you are</p>

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1 reciting here, if I understand this
2 correctly, is what Kent was telling you
3 about getting the sign off by Omar on
4 your file?

5 A. Yes, sir, that's correct. I'm
6 just thinking back.

7 Q. Yes, sir. Did you get any
8 kind of a response from Omar to this
9 e-mail that you can recall?

10 A. I'm not sure -- I don't think
11 I had an e-mail response. I'm not sure
12 if he called me or not. I mean, it may
13 be in the transcript where we discussed
14 that. I'm not really sure.

15 Q. But sitting here today, you
16 don't remember?

17 A. No, sir, as far as e-mail, I
18 don't.

19 Q. And you can't remember any
20 specific telephonic response to this,
21 unless it's otherwise reflected in the
22 transcripts?

23 A. Right.

1 engineers?

2 A. Yes, sir. I assume that's
3 correct.

4 Q. Industrial engineers?

5 A. Route planning, I assume. He
6 was the one who planned the routes and
7 everything.

8 Q. Who told you that that was
9 somebody you should be talking to?

10 A. I think I received a phone --
11 his phone number from Kent. And I knew
12 he was the next man up the -- up the
13 ladder.

14 Q. All right. So, what did Jeff
15 tell you when you reached him?

16 A. Well, it's stated in here. He
17 would find out something. I don't recall
18 exact words. I'd have to read this.

19 Q. Whatever is on this piece of
20 paper is as good as it's going to get --
21 as it will get about your recollection?

22 A. Well, I'm not sure if that's
23 as good as it will get. I know that --

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1 MR. NELMS: Those being the
2 telephone transcripts that we have, the
3 recorded telephone transcripts.

4 MR. SPOTSWOOD: Yeah, I assume
5 he -- none of those conversations are in
6 this time frame, so I assume what he's
7 talking about is his narrative which is
8 Exhibit N.

9 Q. Turning to your entry for
10 Tuesday the 29th of March through
11 Thursday, the 31st of March, it says
12 here, "I talked to Chad, which Chad
13 talked to Jeff White, an engineer with
14 FedEx, and I also called him and talked
15 to him for the first time."

16 A. Correct.

17 Q. Who is him?

18 A. Jeff White.

19 Q. And what was Jeff White's
20 position, as you understood it?

21 A. He was an engineer.

22 Q. He was a -- what kind of an
23 engineer, one of these route planning

1 well, as I put on here, he said that he
2 was glad that I called him, and he was
3 going to find out something. And there
4 may be more to it than that down, you
5 know, in the entry, but on this
6 particular date.

7 Q. Well, do you recall what Jeff
8 White said about your approval status?

9 A. It was still all a paperwork
10 problem.

11 Q. Okay. And this note also
12 says, "Kent called on Wednesday, the 30th
13 and asked I could come in on Thursday and
14 pick up my contractor business guide."
15 And you did that, as reflected here in
16 this e-mail, Exhibit UU, correct?

17 A. Yes.

18 Q. When you picked up your
19 contractor business guide, what did you
20 and Kent talk about?

21 A. If I recall correctly, we -- I
22 picked that up. He explained to me that
23 this was the business guide as far as --

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1 as far as the regulations with FedEx. We
2 went from there into the terminal, and we
3 talked about the Wetumpka route. He
4 pulled it up on a map on the computer and
5 showed me where -- like I stated
6 yesterday, where the route branched out
7 into Elmore County. And --

8 Q. Did he at that time actually
9 try to print a contract out for you on
10 the computer system and was not able to
11 do so, or do you remember that?

12 A. No, sir, I don't recall that.

13 Q. Okay. And the contractor
14 business guide, did you take this home
15 and have a look at it?

16 A. Yes, sir.

17 Q. Did you ask them any questions
18 about it?

19 A. No, sir.

20 Q. Do you know who was working in
21 the Wetumpka area at this time?

22 MR. NELMS: Object to the
23 form.

1 Q. And then it says this: "I
2 told Kent that I would take the Troy
3 route, that I needed to go to work so I
4 could pay my bills, and I asked him what
5 I needed to do." Correct so far?

6 A. Yes, sir.

7 Q. "He told me to check on a
8 Sprinter van with Chad. I called Chad to
9 see if I could. His reply was that FedEx
10 did not like contractors to use the
11 Sprinter, but he would check to see." Is
12 that all correct so far?

13 A. Correct. Yes, sir.

14 Q. "So, I told Kent, and he was
15 going to try to get in touch with Isaac.
16 Kent said he would not return his
17 calls" -- and he's referring to Isaac
18 there, I take it?

19 A. Correct.

20 Q. "But he would let me know, and
21 we would be getting together about the
22 Wetumpka route." Correct?

23 A. Yes, sir.

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1 A. Nobody, as far as I knew. It
2 was just being filled in.

3 Q. By whom?

4 A. Oh, I don't know. It was not
5 a permanent individual doing it. I mean,
6 it was just different people.

7 Q. Your next entry here shows
8 April 1st and 2nd, Friday and Saturday,
9 "I heard nothing on these (sic) days."
10 And then we move -- is that correct?

11 A. That's correct.

12 Q. And then we move to April 5th
13 through April 9th, Tuesday through
14 Saturday. "During this week, I called
15 Kent, and he told me that he and Jeff --
16 and that's Jeff White, correct?

17 A. Correct.

18 Q. -- "was pushing everything
19 through, but he was still trying to get
20 Isaac to finish financing on his van, but
21 he could not get a commitment from him."
22 Is that correct?

23 A. That's correct.

1 Q. That's the last of your notes.

2 A. Right.

3 Q. And, then, we really don't
4 have anything in writing from April the
5 9th until you started recording phone
6 calls, which I think is sometime after
7 the 15th of May. So, my question to you
8 is what was going on between then and
9 these last entries, which would be
10 roughly five weeks or so?

11 A. It's probably in the -- in
12 the --

13 Q. In your narrative?

14 A. Yes.

15 Q. Exhibit O -- N, rather?

16 A. N.

17 MR. NELMS: Gary, did we -- we
18 didn't admit the original, we admitted
19 the copy.

20 MR. SPOTSWOOD: Yeah.

21 MR. NELMS: Okay.

22 MR. SPOTSWOOD: Exhibit QQ.

23 MR. NELMS: Okay.

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1 Q. (BY MR. SPOTSWOOD:) And I'm
2 looking at Exhibit N, at pages 20 and 21,
3 and does that reflect your best
4 recollection of what was going on in the
5 April time frame we've been talking
6 about?

7 A. I'll need to go over that.
8 (Examining document.)

9 Q. Let me be specific with you --
10 well, let me give you a couple of minutes
11 to have a look at pages 20 through 23.

12 A. (Examining document.) You say
13 through 23?

14 Q. Yes.

15 A. Okay. I've reviewed that.

16 Q. Okay. Actually over on page
17 24 it states, "Kent had an Elmore County
18 911 map book that the emergency response,
19 the emergency management response office
20 issues up in Elmore County. He said,
21 Charlie, you need to get you one of these
22 because this will really simplify your
23 job." And then you explain some more

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1 about what he said about it. Does this
2 take place on the same day that you
3 picked up your -- this conversation the
4 same day that you picked up your
5 contractor's business guide?

6 A. I do not recall.

7 Q. Okay.

8 A. It was either that day or
9 after.

10 Q. Soon after, a day or two
11 after?

12 A. I do not recall.

13 Q. On page 24 and 25, at the
14 bottom of the page, you state here after
15 you say, "I wait and I wait and I wait."
16 You say, "And I called Chad, and Chad was
17 telling me that he had spoke to Kent, and
18 as soon as they -- FedEx gave him the
19 approval number, that he was going to
20 e-mail Chad. And Chad said he would let
21 me know, you know, as soon as he got the
22 number and then would release the papers,
23 and I would still have to do some

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1 things."

2 A. Right.

3 Q. "But, anyways, Chad gave me a
4 call, and he told me that the number had
5 come through on the e-mail to Kent at the
6 terminal in Montgomery." Do you know
7 what day that was?

8 A. No, sir, I do not know the day
9 or the date.

10 Q. But in any event, according to
11 this, Chad said he would be sending you
12 the paperwork. He would overnight it to
13 you, and that would allow the van to be
14 released, correct?

15 A. Correct.

16 Q. So, you then get a telephone
17 call from Kent, correct?

18 A. Correct.

19 Q. He asked you how long did you
20 want your contract to be, one year or two
21 years, correct?

22 A. That's correct.

23 Q. And you told him "may as well

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1 go two years because I didn't plan on
2 going anywhere."

3 A. Correct.

4 Q. And he responded okay, quote,
5 he was going to go ahead and put me down
6 for a two-year contract, close quote,
7 period?

8 A. Correct.

9 Q. And your response was "that's
10 fine, you know, that's great."

11 A. That's correct.

12 Q. So, the next day you get your
13 paperwork, and you go down to Kent's
14 office, correct?

15 A. Where are you at? Oh, the
16 next -- okay. I went in -- (Examining
17 document.)

18 Q. Well, you say, "I'm not sure I
19 went in that day or it was the next" --

20 A. That's correct.

21 Q. -- "but it was real close."

22 So, it was either that day or the next
23 day?

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1 A. Correct.
2 Q. So, you go down to his office.
3 You get online with him and you complete
4 your insurance coverage application?
5 A. Correct.
6 Q. And then you had received the
7 packet of materials from Chad, and you
8 had signed all the paperwork on that and
9 returned it to Chad?
10 A. Had it notarized.
11 Q. Okay. Is everything else I
12 just got through saying correct?
13 A. That's correct.
14 Q. So, the van arrives, and I'm
15 now on page 29 where you talk about
16 inspecting the van, checking things off,
17 checking the oil and so forth, and you're
18 doing all that with Kent, correct?
19 A. Correct.
20 Q. And then your statement says,
21 "At that time he said -- and you're
22 referring to Kent -- "we need to get
23 online where I can get you to sign some

Page 302

1 things, correct?
2 A. Correct.
3 Q. So, you go into the terminal,
4 and you got on a PC, and -- Kent got on
5 the PC, I take it, is that correct?
6 A. Correct.
7 Q. And he said, well, there must
8 be something wrong because I can't get
9 on. I can't get on the -- you know, into
10 the area that I need, the page that I
11 need to get on. Is that correct? Is
12 that what he told you?
13 A. That's correct.
14 Q. And your statement says, "He
15 said the reason why he couldn't get on
16 was because they had been doing some work
17 on the computers because of the uplink on
18 the scanner. The scanner that scans the
19 packages, and (sic) they had updated some
20 stuff on it, and he said that's probably
21 what it was." That's what he told you
22 that day?
23 A. That's correct, but can I make

Page 303

1 a statement, please?
2 Q. Yeah, sure.
3 A. We didn't go on. We -- we
4 didn't go on the PC in the office.
5 Q. Okay.
6 A. We went to the inside of the
7 terminal and got on the PC inside the
8 terminal. I don't know why, but that's
9 the terminal -- the one we got on.
10 Q. Okay. But you were on a, you
11 know, PC that was at the facility there?
12 A. Correct. That's correct.
13 Q. And Kent then says, according
14 to your statement, as soon as it comes
15 up, I'll give you a call and you can come
16 back in and sign off, and that's when you
17 left.
18 A. That's correct.
19 Q. So, you then had the radio
20 installed, and we've talked about that
21 already. And you called him the next day
22 and asked what's going on, and he said,
23 quote, it's still not up, correct?

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1 A. Correct.
2 Q. And then he says to you, I
3 will tell you I'll -- "I tell you what
4 we're going to do. We're going to start
5 you next Tuesday. Next Tuesday. This is
6 the Tuesday after Mother's Day."
7 A. Correct.
8 Q. "And he said we can sign
9 that -- we can sign that document Tuesday
10 morning. It won't take no time to sign
11 it."
12 And was it your understanding
13 the document he's talking about is the
14 contract and the --
15 A. No, sir.
16 Q. -- and the P & D contractor
17 business guide?
18 A. No, sir.
19 Q. What did you think the
20 contract was for, Mr. Thornton?
21 MR. NELMS: Object to the
22 form.
23 A. I didn't --

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1 Q. Did you not think that you had
2 to sign a contract?
3 MR. NELMS: Object to the
4 form. Object to the form.
5 A. I didn't know what document he
6 was talking about. He didn't say a
7 contract. He didn't state what it was.
8 He said he had some things that he needed
9 me to sign.
10 Q. Okay. And after looking at
11 this P & D contractor business guide, the
12 centerpiece of which is a signed
13 contract --
14 MR. NELMS: Object to the
15 form.
16 Q. -- you didn't think you had to
17 sign a contract to become a contractor?
18 MR. NELMS: Object to the
19 form.
20 A. He never told me to sign
21 anything.
22 Q. Okay.
23 MR. NELMS: I would like the

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1 record to reflect that, in my humble
2 opinion, Bob's tone and intonation in the
3 last couple of questions verges on
4 harassment.
5 MR. SPOTSWOOD: I don't
6 appreciate that, Andy.
7 MR. NELMS: Including the
8 tossing of Exhibit V, as in Victor, onto
9 the table.
10 MR. SPOTSWOOD: This is not
11 your deposition. If your witness feels
12 like I'm harassing him, he is free to say
13 that. I have asked him fair and
14 reasonable questions in a professional
15 manner for two days, and your description
16 of my behavior is inaccurate.
17 MR. NELMS: The audiotape will
18 reflect the tone of your voice.
19 A. Can I say one thing?
20 MR. NELMS: To me?
21 A. Pertaining to that document.
22 MR. NELMS: Answer his
23 questions.

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1 A. Okay.
2 Q. (BY MR. SPOTSWOOD:) Okay. On
3 page 32 at the bottom and page 33 at the
4 top. In your narrative, you state, and
5 you're talking about Kent, "He told me
6 one time when I was talking to him about
7 the paperwork, he said that some guy
8 named -- there was a guy there, you know,
9 like I was saying, his name was
10 Jermaine." And then, "Well, there was a
11 guy named Jerome that messed up my
12 paperwork."
13 Was it Jerome or Jermaine who
14 messed up your paperwork?
15 A. I understood that it was
16 Jerome. I was just making a distinction
17 that there was two people with similar
18 names.
19 Q. All right. And what was
20 Jerome's last name?
21 A. I have no clue. I never met
22 him.
23 Q. And did Kent tell you who he

Page 308

1 was, where he was located, any
2 particulars about Jerome?
3 A. No.
4 Q. So, according to this, on
5 Monday night as Kent was coming back from
6 Chattanooga, Tennessee where he had
7 lived -- where his family lived at the
8 time, and it's a Monday, I take it. This
9 is the Monday after Mother's Day?
10 A. Yes, sir.
11 Q. He said, quote, I've got some
12 bad news. He said -- I quote him. I
13 have messed up some paperwork. Correct?
14 That's what he told you?
15 A. Correct.
16 Q. He goes on to say here,
17 according to your statement, "I signed
18 some -- the wrong documents, and blah,
19 blah, blah. And I sent them in, and I
20 shouldn't have and -- one excuse after
21 another. He said you can't start
22 tomorrow." Did he explain what paperwork
23 he had messed up?

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1 A. No, sir. Just paperwork.
2 Q. Okay. And you responded,
3 "What do we need to do?" And, "He said,
4 well, while I was in Chattanooga, I went
5 by the terminal in Chattanooga, and I
6 straightened everything out, and I sent
7 it from Chattanooga to corporate (sic)."
8 That's what he told you on that same
9 telephone call we've been talking about?
10 A. Yes, sir.
11 Q. And then he went on to say, I
12 should be hearing back from them
13 Wednesday or Thursday. If I hear from
14 them on Wednesday, we will start you on
15 Thursday," correct?
16 A. Correct.
17 Q. You describe the rest of that
18 conversation. Anything else take place
19 in that conversation other than what's
20 transcribed here --
21 A. No.
22 Q. -- or what you've summarized
23 here?

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1 A. No, sir.
2 Q. And you say -- so, Wednesday
3 rolls around, and you did not hear
4 anything from him, correct?
5 A. Correct.
6 Q. And Thursday rolled -- came
7 around, according to this statement, and
8 you went to the terminal?
9 A. Correct.
10 Q. And you didn't have an
11 appointment to see him, obviously?
12 A. No, sir.
13 Q. And you say here, "He looked
14 at me like I was fixing to jump on him or
15 say something to him." Did he appear to
16 be a little afraid of you, is that what
17 you're saying here?
18 A. No, sir, he just seemed to be
19 sort of nervous or on edge.
20 Q. Startled to see you perhaps?
21 A. Perhaps.
22 Q. And he told you, according to
23 this transcript here, "he had not heard

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1 from anybody and that what we was looking
2 at was just starting the next Tuesday."
3 That would have been the -- the Tuesday
4 the week after Mother's Day, correct?
5 A. Yes, sir.
6 Q. And then you say, "well, that
7 particular date would have been the 17th
8 of May." So, what you're saying here is
9 that Tuesday, that following Tuesday,
10 would have been -- would be the 17th of
11 May, if I'm reading this correctly, one
12 week after Mother's Day, which I think is
13 the 10th?
14 A. Yes. Yes, sir.
15 Q. So, this then gives clarity to
16 the dates. The first Tuesday he told you
17 that you would go to work would have been
18 the 10th, and he called you on the 9th
19 and told you that he had messed up and
20 that you would not start until the 12th
21 if everything came back, correct?
22 A. Correct.
23 Q. So, you call him on the 14th,

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1 which is a Saturday, asking what was
2 going on. Wait a minute. Step back
3 here. Then your statement goes back to
4 discussions with him on the 12th where
5 you say what's got me concerned -- you
6 basically talked to him about the fact
7 that you've got a truck payment due on
8 the 25th, and you're not going to have
9 the money to make it.
10 So, what did he tell you about
11 that when you were expressing concern
12 about the upcoming truck payment and no
13 route on this occasion?
14 A. Well, at that time that's when
15 he expressed to me that he would be -- he
16 would make the truck payment.
17 Q. All right. I see that later
18 down here. Okay. Kent said -- on the
19 bottom of the page, "Kent said I'm going
20 to make your payment for you. I have
21 talked it over with my wife, and I feel
22 like I owe this to you." That's what he
23 said to you, talking about on the bottom

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1 of page 36?
2 A. Yes, sir.
3 Q. And in the meantime, you had
4 spoken with Chad who said you had a
5 ten-day grace period after the 25th?
6 A. That's correct.
7 Q. Is it correct that you could
8 not afford to make that payment yourself?
9 MR. NELMS: Object to the
10 form.
11 A. I could have dug down in
12 savings. But just other than going into
13 savings, retirement money, no.
14 MR. NELMS: Can we break?
15 MR. SPOTSWOOD: Yeah.
16 A. I need to go to the restroom.
17 (Said deposition was in recess
18 at 10:53 a.m. until 11:03
19 a.m., after which the
20 following occurred:)
21 Q. (BY MR. SPOTSWOOD:) I want to
22 go back to Exhibit V for a second. Isn't
23 it correct that Kent Gastineau showed

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1 this to you and told you that this, in
2 fact, would be the standard contract
3 operating agreement that you would
4 eventually have to sign?
5 A. No, sir.
6 MR. NELMS: Object to the
7 form.
8 Q. He never told you that this
9 was going to be the document that would
10 define your business relationship with
11 FedEx Ground?
12 MR. NELMS: Object to the
13 form.
14 A. No, sir.
15 Q. Or FedEx Home Delivery?
16 A. If Kent Gastineau would have
17 told me to read that and sign off, I
18 would have sat right there and read it
19 and signed it and handed it back to him
20 because I signed every other document
21 they asked me to sign.
22 Q. No, I understand. I'm not
23 saying to you that he asked you to sign

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1 this specific document. I'm saying that
2 this was the form of the contract --
3 A. No, he never went over that.
4 He told me I just needed to read this
5 book. He did not go to that page and
6 state that.
7 Q. Okay. But couldn't you figure
8 that out from looking at this document?
9 You already testified that you took it
10 home and then you read it. Didn't you
11 then understand that you were going to
12 have to sign a contract?
13 A. No, I did not.
14 MR. NELMS: Object to the
15 form.
16 Q. You didn't figure that out?
17 A. No, I -- no, I did not.
18 Q. Okay. Did he talk to you
19 about how the compensation system would
20 work and how much money you'd get paid
21 per delivery and that sort of thing?
22 A. He surely did. He explained
23 to me the core zone. Each core zone paid

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1 a different amount. Each route paid a
2 different amount. As far as the fuel, he
3 gave me the -- the sheet over there to
4 show me how the fuel was paid.
5 (Whereupon, Defendant's
6 Exhibit VV was marked for
7 identification.)
8 Q. Let's mark that separately.
9 This is a document that has been just
10 sitting inside the little flap here on
11 Exhibit V, but I'll just mark that
12 separately. This is Exhibit VV, what you
13 have just testified to in reference --
14 A. Correct.
15 Q. -- to the fuel supplement?
16 A. Correct.
17 Q. And you didn't understand or
18 know exactly what document he was trying
19 to print out at the terminal on the day
20 we just talked about, whether that was a
21 contract or not?
22 A. That's correct.
23 Q. But in any case, you couldn't

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1 print out the document that he needed to
2 allow you to go to work?

3 A. He could not print out the
4 document that he was trying to print. I
5 don't know what document that was.

6 Q. And at least as far as he was
7 concerned, and he's the guy who controls
8 whether you work that day, he couldn't
9 put you to work without getting that
10 document to print out?

11 A. I don't know.

12 Q. All right. You had a
13 conversation with him on Saturday, the
14 14th of May, according to this, and I'm
15 looking at the bottom of page 37 and the
16 top of page 38. "I called him and I said
17 you know -- I asked him, I said, have you
18 heard anything. He said, no, I have not
19 heard anything. He said, Charlie, you
20 know -- he sounded real nervous. He said
21 I'm going to make your payment. He said
22 but if you talk to anybody at FedEx, you
23 do not tell them that I am I am going to

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1 make your payment." Is that correct?

2 A. That's correct.

3 Q. And then you go on to say
4 here, "So in my mind, I'm thinking I'm
5 going to turn around, when I get off the
6 phone with Kent, I'll going to call Jeff
7 White and find out what's going on with
8 him. So, I finished my conversation with
9 Kent. He just sounded like he could
10 not -- he was beating around the bush,
11 doesn't give me an answer why he hadn't
12 got it back. He's -- he just sounded
13 like there was a major problem." That's
14 what your statement says here so far,
15 correct?

16 A. Correct.

17 Q. "I called Jeff. Jeff said,
18 Charlie, I've got your contract. He said
19 I've got your contract in my hand. I've
20 got your paperwork from your truck in my
21 hand." I'm going to call -- "I'm going
22 into a meeting at 3:00, and I will call
23 you and let you know what's going on."

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1 And that's Jeff White you're talking
2 about, right?

3 A. Correct.

4 Q. And that's before you recorded
5 conversations, so that conversation is
6 not recorded, correct?

7 A. Correct.

8 Q. "And I told Jeff, I said,
9 Jeff, if you want to call Kent and tell
10 Kent he can call me, that will be fine."
11 So, you waited until Monday, which was
12 the 16th. I waited until the early
13 afternoon. You called Kent that
14 afternoon, and this is when you get the
15 news. "He says, Charlie, there's no
16 routes available. They did not approve
17 the route. They messed up the truck,
18 this, that and the other (sic)." Is this
19 the first time that he told you that the
20 route just was not approved, correct?

21 A. Correct.

22 Q. And when you say here -- and
23 this is Kent supposedly talking, they

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1 messed up the truck, did you understand
2 that to mean they shouldn't have let you
3 get the truck without that route being
4 approved?

5 A. No, sir. At the time I did
6 not understand what he was talking about.

7 Q. Okay. But you understood that
8 later, that's what he was talking about?

9 A. Not in those -- I don't -- I
10 never did know what he meant by messed up
11 the truck.

12 Q. Okay. But according to this
13 statement, you told him, "You mean I
14 don't even have a route to go to work,
15 and you guys have approved this truck?"

16 A. Correct.

17 Q. So, you didn't think that's
18 what he was talking about when he said
19 messed up the truck?

20 MR. NELMS: Object to the
21 form.

22 A. I didn't understand what he
23 meant by messed up the truck.

17 (Pages 317 to 320)

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1 Q. Okay. So, you then called
2 Jeff White, correct?
3 A. Correct.
4 Q. And this is, again, on Monday,
5 if I'm not mistaken, the 16th? That's
6 how it seems --
7 A. Yes, sir.
8 Q. -- the same day you were
9 talking to Kent?
10 A. Yes.
11 Q. And if I understand your notes
12 here correctly, you didn't really have a
13 substantive conversation with Charlie
14 about what happened here, but you just
15 agree that you all have a conference call
16 in -- on the 17th and talk about the
17 situation?
18 A. You're talking about with
19 Jeff?
20 Q. Yes.
21 A. Yeah, Jeff told me to call him
22 the next day. That's correct.
23 Q. He didn't tell you what

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1 happened or --
2 A. No, sir. He was just brief,
3 to the point.
4 Q. And then when you later talked
5 to Kent on that same day, according to
6 your statement, the only thing he said to
7 me was that Jeff told him, him being
8 Kent, that he blind-sided him. Who blind
9 sided whom here. I'm a little bit
10 confused, that Kent had blind-sided Jeff?
11 A. Correct.
12 Q. "I couldn't get it out of him
13 what he meant by blind-sided him" is what
14 you say here?
15 A. Right. That's correct.
16 Q. And you say here, "I kept on
17 asking him, well, Kent, what do you mean
18 by blind-sided me." What did Kent say in
19 response?
20 A. Whatever the document here
21 says. I don't recall. I would have to
22 read this.
23 Q. Well, go ahead because I don't

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1 see that answer to that question in here.
2 A. He said, well, with this route
3 and like this, and it's -- so, I mean,
4 they should have known their job. They
5 should have known their job. It wasn't
6 for me to know their job. They should
7 have known their job and whatever.
8 Q. Well, that's what I'm having
9 trouble with. Who's talking here, you or
10 Kent?
11 A. Kent.
12 Q. Kent is saying they should
13 have known their job?
14 A. Let me go back and read this.
15 Q. It wasn't for me, Kent, to
16 know their job; they should have known
17 their job or whatever? I'm just having
18 trouble --
19 A. That's Kent. That's what Kent
20 said.
21 Q. All right. And then you
22 called Jeff back, according to this
23 statement. This is still Monday, the

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1 16th, correct?
2 A. Correct.
3 Q. And you called Jeff back, and
4 you told him about the truck payment
5 situation. You told him that Kent said
6 he was going to make the payment.
7 A. I told Jeff that after the
8 fact that Jeff just -- he sounded like he
9 didn't give a crap. That was my
10 responsibility, and he didn't care.
11 Well, I was already upset, and that's
12 when I proceeded to tell him that Kent
13 said he would make a payment. I was
14 very, very, very frustrated.
15 Q. And your testimony is that
16 Jeff didn't appear to be concerned about
17 the situation?
18 A. Prior to telling him about
19 Kent?
20 Q. Yeah, that you had a truck,
21 you didn't have a route --
22 A. That's exactly right. Exactly
23 right.

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1 Q. Well, what words did he use to
2 give you the impression that he wasn't
3 concerned about your situation?
4 A. It was my responsibility that
5 FedEx had no responsibility.
6 Q. And then we come to Tuesday,
7 which is the 17th, and you talk to a
8 young woman named Carol, correct, right?
9 A. Correct.
10 Q. And that's when we start
11 recording conversations, correct?
12 A. I am not sure.
13 Q. Well, let's just see if we can
14 figure this out. It's not very hard.
15 Here is Exhibit O, and the very first
16 entry here is phone call to Jeff White,
17 and one transcript calls her Carol and
18 the other transcript calls her Cheryl.
19 Are these the same people that you're
20 talking about?
21 A. Yes.
22 Q. Okay. So, we couldn't figure
23 out before what date that conversation

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1 was, but it would appear, then, that this
2 is Tuesday, the 17th of May that your
3 phone call to Jeff White as reflected on
4 Exhibit O occurred.
5 A. When I spoke to Carol, it was
6 the day of the conference call. It
7 should have been the day of the
8 conference call.
9 Q. All right. And you -- well,
10 look here. On your own recorded notes,
11 you say, Come Tuesday at 10:15 I made a
12 phone call, and the number was. You give
13 the number. "And I talked to a young
14 lady by the name of Carol. I told her
15 who I was and the reason why I was
16 calling, and I wanted -- I needed to
17 speak to Jeff. And she told me that Jeff
18 was in a meeting and that she needed to
19 go back there and tell him I was on the
20 phone. So, she did that. And when she
21 came back, she said Jeff told me to tell
22 you that he would call you that
23 afternoon -- which was Tuesday

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1 afternoon -- he would call me and talk to
2 me." And you gave her your phone number,
3 got off the phone. All right.
4 Isn't that the conversation
5 that's recorded here?
6 A. Sure.
7 Q. All right. Well, that's all
8 I'm trying to find out.
9 A. Well, I'm not -- I'm not sure
10 if that's when the conversations were
11 being taped. That's all I'm saying.
12 Yeah, that's correct. You're correct.
13 Q. So, this is the conversation
14 that you're making reference to here? I
15 need to be more specific for the record.
16 The conversation that we just talked
17 about here in Exhibit O is the
18 conversation that you are describing on
19 page 43 of Exhibit N?
20 A. Possible. I'm not even
21 looking at it. I probably need to look
22 at it too.
23 Q. That's Exhibit N right there

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1 in front of you. Just flip off --
2 actually you've got --
3 MR. NELMS: He's on page 43.
4 Q. You're on page 43. Here's
5 Exhibit O, and that's what I'm talking to
6 you about, and, you know, it's very
7 short.
8 A. Right.
9 Q. It's just two pages.
10 A. That's correct.
11 Q. And that would clarify that
12 this conversation happened on Tuesday,
13 the 17th of May?
14 A. You're correct. That's
15 exactly right.
16 Q. And from that point forward,
17 all of your communications with FedEx
18 that were on the phone were recorded?
19 A. Correct.
20 Q. And then you make reference to
21 a conversation with Kent in this
22 statement I called Kent, and that's one
23 of the recorded conversations here, I

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1 take it. You recorded all your
2 conversations with Kent after that point
3 in time?

4 A. Yes, sir.

5 MR. SPOTSWOOD: I have
6 probably about an hour or so more to go.
7 I'd like to take a lunch break, if we
8 could.

9 MR. NELMS: Okay. I didn't
10 realize it was that late.

11 MR. SPOTSWOOD: Yeah. And
12 come back. I don't care, a quarter to
13 one. If that's all right. About an hour
14 and 15 minutes, and then I think we'd
15 probably be able to wrap everything up by
16 two or three, if that's all right with
17 you guys.

18 MR. NELMS: Okay. That's
19 super.

20 (Said deposition was in recess
21 at 11:22 a.m. until 1:08 p.m.,
22 after which the following
23 occurred:)

1 premium up here of 922.57, so the
2 difference between those two numbers
3 would appear to be what your
4 out-of-pocket cost was for the insurance.
5 And, then, on disability, that premium
6 was \$2,368.63. It looks like the refund
7 here was \$2,237.79. So, we have totals
8 in both places, so your total refund was
9 \$3,109.47, and your total charged premium
10 was \$3,291.20, so the actual cost
11 differential to you was the difference
12 between those two numbers. Does that
13 sound right?

14 A. Are you saying they refunded?

15 Q. I'm saying there was a refund
16 of this premium according to these
17 records.

18 A. That's news to me.

19 Q. All right. Well, let's go off
20 the record for just a second.

21 (Off-the-record discussion.)

22 Q. (BY MR. SPOTSWOOD:) Let's go
23 back on the record here. Mr. Thornton,

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1 (Whereupon, Defendant's
2 Exhibit WW was marked for
3 identification.)

4 Q. (BY MR. SPOTSWOOD:) Let me
5 show you Defendant's Exhibit WW, Mr.
6 Thornton, and these -- I think your
7 attorney will agree with me, are the
8 documents that were just faxed today to
9 Jay Lewis from Stearns Bank, so can you
10 confirm that's what we're looking at
11 here?

12 A. Yes, sir.

13 Q. All right. Most of these
14 documents in here I think we've already
15 talked about. What I do see, though, is
16 a premium refund receipt schedule, and
17 this is in connection with your life and
18 disability coverage that you got in
19 connection with the vehicle. It says a
20 date -- it has a date of cancellation,
21 6/30/05. It says the policy was in force
22 for two months, and it shows a refund of
23 \$871.68, and I think that's against this

1 was it your understanding that this
2 premium total here of \$3,291.20 was part
3 of what was included in the note in the
4 total amount of -- well, let me strike
5 that.

6 And I think we've already been
7 through this conditional sales contract,
8 too, but the second document in Exhibit
9 WW is the conditional sales contract, and
10 it says, "Buyer agrees to pay \$35,148.88
11 as and for the purchase of the
12 equipment," which was the truck, correct?

13 A. Right.

14 Q. And, then, "Buyer further
15 agrees to further pay \$3,291.20 as
16 premium for the credit insurance
17 coverage, which premium is to be included
18 in the periodic installments referred to
19 in paragraph 4(b) below," correct?

20 A. Correct.

21 Q. Okay. So, that was included.
22 So, what happened here, apparently when
23 we go back and look at the cancellation,

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1 is that this was -- this amount that we
2 talked about \$3,109.47 was something that
3 was credited over against the outstanding
4 indebtedness when it was refunded. Is
5 that the way you understand it would have
6 worked, if you know? You may not know?

7 A. Well, that's the way it reads.
8 Now, when you say refunded --

9 Q. I mean basically given to the
10 bank in partial payoff of the
11 obligations, correct?

12 A. Yes. Yes.
13 (Whereupon, Defendant's
14 Exhibit I was marked for
15 identification.)

16 Q. If you would, please have a
17 look at Defendant's Exhibit --

18 MR. PARKER: I.

19 Q. -- I. I was going to ask if
20 these are the -- if this document is the
21 initial disclosure form that your counsel
22 provided in connection with the lawsuit.

23 A. (Examining document.) Yes.

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1 (Whereupon, Defendant's
2 Exhibit J was marked for
3 identification.)

4 Q. Now, if you would, have a look
5 at Exhibit J. I'd like you to confirm
6 for me that these are your answers to the
7 first request for production of documents
8 in this case.

9 A. (Examining document.) I
10 really don't understand this document
11 right here. What is it?

12 Q. Well, this is -- these are --
13 Exhibit J is, I will tell you, a
14 pleading, or rather a discovery response
15 that was served on us by your counsel,
16 and it is signed by your counsel. You're
17 not actually required to sign this
18 document yourself, and I don't think you
19 did.

20 A. Oh, I see. Okay.

21 Q. But I believe it is undisputed
22 that this is -- these are the responses
23 you made to our request for production of

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1 documents. Is that your understanding as
2 well?

3 A. Yes.

4 Q. All right. Now, let me ask
5 you to have a look at Defendant's Exhibit

6 K.

7 (Whereupon, Defendant's
8 Exhibit K was marked for
9 identification.)

10 Q. Now, these were served on us
11 and appear to be your answers to our
12 interrogatories.

13 A. Yes.

14 Q. And you did, in fact, sign
15 those, did you not?

16 A. Yes.

17 Q. Going back for a second to the
18 two security companies that you had an
19 ownership interest in. My recollection
20 is that I did ask you some questions
21 about the sale of American Shield, but I
22 forgot to ask you about the sale of
23 Security Experts. Did you and your

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1 partner in that business sell that
2 business?

3 A. No, we just dissolved the
4 business.

5 Q. So, you didn't actually
6 recover any income from the sale of
7 either one of those businesses?

8 A. No, I did not.

9 Q. Do you remember when Security
10 Experts was shut down?

11 A. Not -- no, sir, I -- not
12 exactly as far as a date.

13 Q. In your answer to
14 interrogatory number seven, if you'll
15 look at Exhibit K there, you were asked
16 identify any offers of employment or
17 specific employment opportunities that
18 you declined in 2005, and your answer
19 then was none.

20 A. Right.

21 Q. If I recall correctly from
22 your testimony, you did, in fact, have an
23 opportunity to go to State Farm that you

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1 declined in 2005, is that right?

2 A. That is exactly right.

3 Q. Okay. And that's the
4 opportunity that your wife took advantage
5 of, correct?

6 A. I recommended her for the job.

7 Q. And she was offered it and
8 took it?

9 A. Yes. Yes.

10 Q. Apart from that opportunity --
11 and that's what she's doing today, if I
12 remember correctly?

13 A. That's right.

14 Q. Apart from that opportunity,
15 were there any other offers of employment
16 or specific opportunities for employment
17 that you declined in 2005?

18 A. No, sir.

19 Q. I am going to call your
20 attention to interrogatory 11. In that
21 interrogatory we asked you about damages,
22 and specifically we asked you to identify
23 and describe in detail any damages

1 Q. All right. You then say --

2 any other lost income that you were
3 talking about except for what you just
4 described?

5 A. Sure. After the fact of being
6 unemployed after all this came to a
7 screeching halt, loss of income there.

8 Q. Until you could find a job?

9 A. Right.

10 Q. Do you have any idea how much
11 lost income you're talking about?

12 A. No, I do not.

13 Q. You then say, as part of your
14 damage request, I lost medical insurance
15 for the family. What medical insurance
16 were you talking about?

17 A. My medical insurance for me
18 and my wife, family coverage.

19 Q. And you --

20 A. I could not afford it.

21 Q. You couldn't afford it because
22 you didn't have the job with FedEx that
23 you had hoped to get?

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1 incurred by the plaintiff allegedly
2 resulting from any act or omission on the
3 part of FedEx Ground, including the
4 nature of the damages, the total amount,
5 the method of computation and any
6 evidence you intend to use to support or
7 substantiate any such damages. And I
8 want to ask you some questions now about
9 your response. Your first response is I
10 lost income. What income did you lose?

11 A. Working income as far as being
12 employed.

13 Q. Being employed as what, a
14 driver for FedEx?

15 A. No, just income.

16 Q. All right. And you say you
17 lost income. Is that because during this
18 roughly five-month period of time you
19 were aggressively looking to get a job at
20 FedEx and you were not looking elsewhere?

21 A. That's exactly right. I was
22 not looking to get a job. I felt like I
23 had the job.

1 A. Yes.

2 MR. NELMS: Object to the
3 form.

4 Q. When did you obtain medical
5 insurance for the family in 2005?

6 A. I do not remember the -- the
7 date.

8 Q. Is it something that you got
9 through your wife's employment?

10 A. No.

11 Q. But you and she had to go out
12 and buy a policy?

13 A. Yes.

14 Q. And you don't remember exactly
15 when that was?

16 A. It was during the five months.

17 Q. That you got a policy?

18 A. Yes, I did.

19 Q. Okay. If I understand you
20 correctly from your responses to these
21 interrogatories, you did have a medical
22 expense of \$475 that you had to pay with
23 your credit card because you did not have

22 (Pages 337 to 340)

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1 insurance. That's in response to
2 interrogatory 13.
3 A. That's correct.
4 Q. Did you have any other medical
5 related or hospital or expenses that were
6 unreimbursed by insurance during this
7 period when you didn't have insurance?
8 A. No, sir.
9 Q. When did you lose the
10 insurance policy that you ultimately
11 wound up -- when was the last time before
12 you bought the policy in this five-month
13 period that you previously had had an
14 insurance policy for medical care?
15 A. Restate the question, please.
16 Q. What I'm trying to find out is
17 how long were you uninsured, from what
18 period up until -- you said at some point
19 in time in the five-month period we've
20 been talking about, you know, from
21 January through May, that you did go
22 ahead and get an insurance policy?
23 A. Correct.

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1 Q. You went out and bought one?
2 A. Correct.
3 Q. My question to you is how long
4 a period of time had you been uninsured?
5 A. Previous to that?
6 Q. Yes.
7 A. I was not uninsured. I was
8 under a COBRA plan.
9 Q. Okay. So, you were paying
10 your COBRA coverage?
11 A. Yes.
12 Q. And then -- well, then maybe
13 you were never uninsured. That's what
14 I'm trying to find out. When were you
15 uninsured?
16 A. After I canceled my -- the
17 policy that we went out and took with
18 Mega -- Mega Health and Life. When I
19 knew that this -- okay. Let me back up.
20 We took out the policy when
21 the COBRA ran its course.
22 Q. Which is what, usually
23 18 months or so?

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1 A. Well, it -- the COBRA had not
2 actually ran its course. The COBRA was
3 more expensive than what we were taking
4 out.
5 Q. Okay.
6 A. So, we inquired of Mega Health
7 and Life, had a representative to come
8 down and sit down with us, and we took
9 out a policy. That was a lot cheaper
10 than COBRA.
11 Q. Okay.
12 A. And we kept that until I just
13 knew I could not continue to pay 600
14 something dollars a month or thereabouts.
15 Q. All right. And, then, so, how
16 long after that policy was terminated
17 were you uninsured?
18 A. I'm uninsured now.
19 Q. You don't have any health
20 insurance at this time?
21 A. No, sir.
22 Q. And is your wife -- does she
23 have any insurance?

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1 A. He does not supply insurance.
2 Q. No, I'm asking is she covered
3 by a health insurance policy?
4 A. No, she is not.
5 Q. Are any of your children
6 covered by any health insurance?
7 A. I can't speak for them. They
8 are on their own.
9 Q. Okay. And have you had -- let
10 me ask this question again: Have you had
11 any medical expenses that you've had to
12 pay out of your own pocket that otherwise
13 would have been paid by insurance except
14 for the \$475?
15 A. Sure.
16 Q. Okay.
17 A. My wife's medicine. She takes
18 a thyroid medication. As far as myself,
19 basically if I went to PriMed for flu,
20 which I have had and the medication, you
21 know, that was prescribed from that, I've
22 had to pay it out my pocket.
23 Q. Do you have any idea generally

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1 of how much money we're talking about?
2 A. No, sir, I -- I do not. I
3 wouldn't -- I would hate to say and it be
4 incorrect.
5 Q. Okay. But it would have been
6 treatment at a -- for the flu --
7 A. Yes.
8 Q. -- and any related medications
9 for that?
10 A. Yes.
11 Q. Do you have any judgment of
12 how many times you visited Prime Care or
13 Prime Aid?
14 A. I think it's been maybe two to
15 three times.
16 Q. You then list as an element of
17 damages stress, and along with that, you
18 also say "my health declined." Can you
19 tell me what stress-related or
20 health-related issues that you attribute
21 specifically to what we've been talking
22 about involving FedEx Ground?
23 A. There's a number of things.

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1 Stress related to seeking employment,
2 stress of no additional income coming in,
3 the worry, stress between the wife and
4 myself trying to figure out what we're
5 going to do because this was such a --
6 you know, it was such a positive thing,
7 and then, boom, it was like the rug was
8 pulled out from under me. I mean, you
9 know, I don't know if you can put it in
10 words to accurately explain how stress
11 works on you, but it definitely worked on
12 me, keeping it inside, thinking about it
13 continuously, and every -- you know,
14 looking for the job and stuff like that.
15 Q. Okay.
16 A. And that has caused my blood
17 pressure to -- I never had a problem
18 before. I didn't even realize what the
19 problem was until I went to the doctor.
20 I thought I was going to die or pass out.
21 Q. And the reference about going
22 to the doctor, is that your visit to Dr.
23 Marla Wool --

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1 A. Yes.
2 Q. -- on August the 10th, 2005?
3 A. (Nodding head affirmatively.)
4 Q. Correct?
5 A. Yes.
6 Q. And what were your symptoms
7 when you went to see her?
8 A. I had been having a breathing
9 problem, extreme headaches. My eyes felt
10 like they were swollen, couldn't sleep.
11 Such as that. And it -- it just got to
12 the point where I felt like I had to go
13 and do something.
14 Q. All right. So, she did an
15 evaluation of you?
16 A. Yes.
17 Q. What did she diagnose you
18 with?
19 A. My blood pressure was
20 extremely high. She wondered how I had
21 not already possibly had a stroke.
22 Q. And, so, she diagnosed you
23 with hypertension?

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1 A. Hypertension, yes, sir.
2 Q. And she prescribed medications
3 for you, and we've already talked about
4 that?
5 A. Yes, sir. Yes, sir.
6 Q. Are you still taking your
7 hypertension medication?
8 A. Yes, sir.
9 Q. And have you had any follow-up
10 visits with Dr. Wool?
11 A. Yes, I have.
12 Q. And what has she been telling
13 you about your hypertension?
14 A. Basically it's just a review
15 of the medication and how it's working
16 and see if it's regulated.
17 Q. Is it?
18 A. Yes.
19 Q. Were there any other impacts
20 on your health other than what you've
21 described so far?
22 A. Not really. I mean, it was --
23 you know, there's -- no.

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1 Q. The next item of damages that
2 you mentioned is "lost my home due to
3 significant loss in income." I thought
4 your home was paid for and --

5 A. It is. I have two homes. I
6 inherited my father's home, and --

7 Q. That's the one in Chilton
8 County we discussed?

9 A. That's correct.

10 Q. All right. And how did you
11 lose that home?

12 A. Well, I -- I took out a
13 mortgage on the home in 2004 to pay off
14 my home here and do some things in the
15 home and --

16 Q. When you inherited the
17 property, it was free and clear of any
18 kind of mortgage, correct?

19 A. Right. And --

20 Q. What was the amount of the
21 mortgage that you took out in 2004,
22 roughly?

23 A. 60,000. And I had a -- my son

1 anything to the property, land. You
2 know, I just needed somebody to secure
3 that money because my name was on the
4 line until they can get financing. And
5 this was the only opportunity that I had,
6 and I had to take -- take an opportunity.

7 Q. And who is living in the house
8 now?

9 A. Keith Mitchell. Keith
10 Mitchell and his wife Lorna.

11 Q. Are they any relationship to
12 you?

13 A. Yes, she is.

14 Q. What is she?

15 A. She's like a step-cousin.

16 Q. Okay. So, she's related
17 directly to your wife?

18 A. No, she would have been -- she
19 would have been related to me.

20 Q. Okay. Right. And I'm sure
21 there are documents that reflect this?

22 A. Oh, yes, I have those
23 documents.

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1 was living there, which there was no
2 problem with that, and he was -- he was
3 basically making the payments, and then
4 he had -- he had to move out because of
5 his job, so I had to put the home up for
6 sale. I could not make the payments in
7 2005. The house appraised for 80 --
8 84, \$85,000, and I had to make a
9 decision, because I could not make the
10 payments, either to lease the house out
11 with the option to buy at the payoff
12 price.

13 Q. Which was roughly 60 grand?

14 A. Well, at that time it was not
15 60. I think it was like -- I'm not
16 really sure exactly what it was at the
17 time. Mid-fifties. Or either lose the
18 house. And I had to draw up -- have the
19 papers drawn up stating that, you know,
20 as long as they -- and I believe
21 they will. As long as they'll make the
22 payments and do what they -- I will not
23 kick them out of the house. They can do

1 Q. And when was this deal
2 structured and put into place?

3 A. It was -- I don't know the
4 exact date. It was the latter part of
5 2005.

6 Q. The other thing you say here
7 is, as an element of damage, is that "it
8 depleted my savings." Can you be more
9 specific about what you mean by that?

10 A. Well, Debbie and I had
11 savings. Also, when her mother passed
12 away, she inherited some money. It took
13 that money and our savings to -- to make
14 ends meet.

15 Q. For 2005?

16 A. Yes. And that was -- I think
17 that was very hard on my wife because of
18 the money that her mother had saved for
19 her.

20 Q. Do you recall the amount of
21 the inheritance?

22 A. No, sir, I do not.

23 Q. The next item that you list

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1 here is "lost the down payment on my
2 truck and tag for my truck." The truck
3 you're talking about and the down payment
4 and the tag is the truck that's been the
5 subject of much discussion in these last
6 two days, correct?

7 **A.** That's correct.

8 **Q.** You then say, quote, I was
9 extremely embarrassed and humiliated
10 after having to tell family and friends I
11 was no longer employed. Given -- I guess
12 I -- can you explain that to me?

13 **A.** Well, of course, you know, we
14 live in a -- we live in a cul-de-sac, at
15 the back end of the cul-de-sac. I know
16 my neighbors, and, you know, everybody
17 knew that I was going to work for FedEx.
18 I mean, just in talking. We talk.
19 Church members, pastor, you know, we --
20 in general talk, and, you know, they
21 would ask how things are going, and then
22 it's -- it's very humiliating to tell
23 someone, well, you know, this is -- I

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1 don't understand what's going on. You
2 don't have the answers to their
3 questions. They are concerned, but you
4 just don't know how to answer those
5 questions, and it is very humiliating.
6 And then, you know, you're going to work
7 for, you think, what is a great company.
8 Or you're going to represent a great
9 company. And then you're in a position
10 to where you're looking for a job and
11 people are concerned and say, you know,
12 how is it going looking for a job and all
13 like that. I mean, it's very humiliating
14 and stressful.

15 **Q.** Are there any other elements
16 of damages that you haven't told us
17 about? That's all you listed in your
18 interrogatory responses. Anything else?

19 **A.** Well, you know, like I was
20 saying earlier, it's taken a toll on me
21 as far as my health, as far as Debbie and
22 I -- it's been stressful for me and my
23 wife, not knowing what's around the

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1 corner. And the most puzzling thing of
2 the whole ordeal, and maybe it's just
3 because of the person I am, because I've
4 always been taught to have high
5 integrity, be honest with people and
6 treat everybody right, is why in the
7 world, since I went through what I went
8 through and was asked -- asked to do what
9 I was asked to do, somebody didn't have
10 the decency and the respect to just pick
11 up the phone and say, Charlie, we're
12 wrong; we need to find out why and let
13 you know why or make some type of amends.
14 It was like we don't give a crap about
15 you. You're finished, boom. And I'm
16 left like a fish out of water, and we
17 know what a fish does out of water, to
18 flounder at my own expense.

19 We -- you know, we lost --
20 we -- it was a stressful situation
21 altogether because my wife lost her
22 father in December. My wife lost her
23 mother in February. December of 2004 he

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1 passed away; February of 2005, she passed
2 away. My dad had passed away a year
3 before. A year and a half before that,
4 my mom passed away. We were trying -- we
5 were trying to deal with all this, and
6 then, bam, this comes in too, you know.
7 But it's -- it's very stressful. I hope
8 none of you guys ever have to go through
9 this.

10 **Q.** Have you had any counseling
11 from any kind of a healthcare
12 professional?

13 **A.** No, sir, just my pastor.

14 **Q.** And have you and your wife had
15 any marriage counseling that you
16 attribute in any way to this situation?

17 **A.** No, sir, just the pastor of
18 the church, which we've known him for
19 years.

20 MR. SPOTSWOOD: Off the record
21 for a second.

22 (Off-the-record discussion.)

23 (Said deposition was in recess)

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1 at 1:42 p.m. until 1:45 p.m.,
2 after which the following
3 occurred:)
4 A. I have one other thing.
5 Q. Go ahead.
6 A. As far as damages also, I've
7 always paid my child support. I have one
8 son that is -- still with his mom, and
9 there was no way that I could pay my
10 child support. I have just hoped and
11 prayed that she has not come after me for
12 that, which she has not, but I still owe
13 it to her and --
14 Q. How do you pay child support?
15 Do you mail her a check?
16 A. No, sir. I go through the
17 court system to where everything is
18 documented.
19 Q. And how much in arrearage are
20 you in your child support?
21 A. I couldn't really tell you an
22 exact figure. I don't know.
23 Q. Give me a within \$10,000

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1 estimate.
2 A. I -- I'm not even going to
3 speculate on that. I don't know. I know
4 it's \$358 a month, but I do not know --
5 Q. Well, do you remember the last
6 time you made a child support payment?
7 A. No, I'd have to look. That
8 was -- it was in 2005, but I don't know
9 when the last -- the last month.
10 Q. And where is that Family
11 Court --
12 A. Chilton County.
13 Q. -- pending? Chilton County.
14 And what's the style of the case? Would
15 it be Thornton versus Thornton?
16 A. I assume, yeah.
17 Q. I know you probably told me
18 this already, but what is your wife's
19 name now, your former wife's name?
20 A. Cahill.
21 Q. Cahill?
22 A. (Nodding head affirmatively.)
23 Q. K-A-Y-H-I-L-L?

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1 MR. NELMS: K or C.
2 A. It's a C.
3 Q. C-A-Y --
4 A. C-A -- yeah. I assume. We
5 don't correspond.
6 Q. I understand.
7 (Whereupon, Defendant's
8 Exhibit XX was marked for
9 identification.)
10 Q. Let me show you Defendant's
11 Exhibit XX, which is a document that was
12 produced to me yesterday. What is that?
13 A. (Examining document.) On,
14 this is just a -- this was pulled up on
15 Careerbuilder as far as a job posting of
16 FedEx when this -- it was --
17 Q. What did it --
18 A. 10/12/2005. They had actually
19 posted another job opening -- no, it was
20 September the 24th of 2005 when it was
21 posted for -- for Home Delivery, for
22 another contractor, Ground and FedEx Home
23 Delivery for the Montgomery area.

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1 Q. All right.
2 A. And it -- and it says asked
3 for Kent Gastineau, operations manager.
4 Q. All right. So, did you call
5 up Kent Gastineau and tell him you still
6 wanted a job?
7 A. No, sir, I did not. No. No.
8 Q. The fact of the matter is that
9 you had had it with FedEx at the time you
10 filed this lawsuit, correct?
11 MR. NELMS: Object to the
12 form.
13 Q. You were no longer interested
14 when you filed this lawsuit?
15 A. I did not file a lawsuit. I
16 came to Andy asking him what my rights
17 were.
18 Q. Well, you filed a lawsuit,
19 sir.
20 A. I did, after counsel with
21 Andy.
22 Q. All right.
23 A. I did not have any hard

27 (Pages 357 to 360)

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1 feelings toward anybody. I was very
2 disgusted because they had not treated me
3 as fair as I had treated them, and I
4 could not understand several things like
5 job postings when I'm sitting at home
6 waiting for the phone to ring to go to
7 work, they are still putting ads in the
8 paper wanting people to come to work to
9 be a contractor. Now, if you can make
10 heads or tails of that, you're a better
11 man than I am.

12 Q. Well, have you seen or heard
13 or learned anything from your experience
14 with FedEx that indicates to you, and you
15 were there, that somebody other than you
16 got a route in Montgomery, Alabama other
17 than Isaac Scott during this period we're
18 talking about?

19 A. Somebody else got a route?

20 Q. Yes.

21 A. The only ones that I know that
22 got a route were the other contractors
23 that were assigned the routes that were

1 A. Oh, no, no, no, no, no, no.

2 Q. But you seem to be critical of
3 the fact that the company is soliciting
4 interest in people to --

5 A. It's very misleading.

6 Q. You consider anytime that they
7 have an informational session without
8 having a specific route available to be
9 misleading?

10 A. It is misleading if it is
11 handled the way it was handled with me.
12 (Whereupon, Defendant's
13 Exhibit YY was marked for
14 identification.)

15 Q. All right. Let me show you
16 Defendant's Exhibit YY. Is this a
17 copy --

18 A. Yes, it is.

19 Q. -- of the front of a credit
20 card, an American Express business card
21 with your name on it that you were given,
22 I'm going to assume, in April, maybe
23 of '05?

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1 said -- that were available.

2 Q. I mean, somebody from outside
3 the company who wasn't already a driver,
4 did anybody outside the company other
5 than Isaac Scott who was temporary get a
6 route during this period of time we're
7 talking about?

8 MR. NELMS: When you say "this
9 period of time we're talking about," are
10 you talking about during his period of
11 time from, say, January till --

12 MR. SPOTSWOOD: Yeah, till he
13 sued us.

14 MR. NELMS: Till May.

15 MR. SPOTSWOOD: Yeah.

16 MR. NELMS: Of 2005.

17 MR. SPOTSWOOD: Yeah.

18 MR. NELMS: Okay. If you
19 know.

20 A. You're saying someone else got
21 a route.

22 Q. No, I'm asking you if you're
23 aware of anybody else getting a route.

1 A. Yes.

2 MR. SPOTSWOOD: Are you going
3 to have some questions, do you think?

4 MR. NELMS: (Nodding head
5 affirmatively.)

6 MR. SPOTSWOOD: All right. If
7 you don't hold me strictly to the -- you
8 know, don't cover anything new, I'm going
9 to pass the witness to you, and I'm
10 going -- while you're asking your
11 questions, I'll look at my notes to see
12 if I've got anything else.

13 MR. NELMS: Okay. That's fair
14 enough.

15 MR. SPOTSWOOD: I'll do that.

16 A. Can I run to the restroom?

17 MR. NELMS: No. Just kidding.
18 (Said deposition was in recess
19 at 1:52 p.m. until 1:54 p.m.,
20 after which the following
21 occurred:)

22 Q. (BY MR. SPOTSWOOD:) Let me
23 ask a couple of other questions before

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1 you get started, Andy. On Exhibit YY,
2 who gave that to you?

3 A. American Express.

4 Q. Was it sent to you in the
5 mail?

6 A. Yes.

7 Q. Okay. Did Kent say anything
8 to you about it?

9 A. About receiving this?

10 Q. Yes.

11 A. No.

12 Q. Did you say anything to him
13 about it?

14 A. Not that I had received it,
15 no.

16 Q. Okay. Did you put any
17 expenses on it, use it in any way?

18 A. No.

19 Q. As we sit here today, you
20 didn't -- I didn't see any kind of an
21 envelope or anything with it. Do you
22 know when you actually received it?

23 A. I received it after I -- my

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1 truck was delivered.

2 Q. All right.

3 A. Because I put my gas expense
4 the first time on my other credit card.

5 Q. Okay.

6 (Off-the-record discussion.)

7 MR. SPOTSWOOD: All right.

8 Thank you, sir.

9 (Said deposition was in recess
10 at 1:55 p.m. until 2:00 p.m.,
11 after which the following
12 occurred:)

13 MR. NELMS: Were you finished,
14 Bob?

15 MR. SPOTSWOOD: Yeah, on the
16 same condition that I told you a minute
17 ago. Don't hold me to your questions and
18 I think I'm probably done.

19 MR. NELMS: Well, if -- off
20 the record.

21 (Off-the-record discussion.)

22
23 EXAMINATION BY MR. NELMS:

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1 Q. Charlie, I'm going to ask you
2 a few questions. A lot of the questions
3 that I ask you are going to be directly
4 related to questions that you've already
5 heard today, so I may refer to them on
6 and off.

7 First of all, I believe we've
8 already talked about the first meeting
9 that you had that was an informational
10 session, and it was held at the Holiday
11 Inn, and Stan Trott was the presenter.
12 Is that a correct statement?

13 A. Yes.

14 Q. Okay. During that meeting,
15 did Mr. Trott have any literature or
16 paraphernalia with him that had the FedEx
17 logo on it?

18 A. No.

19 Q. All right. We saw some
20 brochures today and yesterday that were
21 given to you -- well, let's start with
22 this FedEx Home Delivery bag. How did
23 you come to receive this?

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1 A. That was given to me by Kent.

2 Q. All right. When?

3 A. I don't recall a date.

4 Q. Okay.

5 A. It was after my training.

6 Q. All right. And for the
7 record, I'm holding up a black zip bag
8 that's approximately ten by 13 inches.
9 I'm not going to put it on the record.
10 Now I'm holding up a laminated five by
11 eight and a half card that has FedEx
12 Ground on it. Do you recognize it?

13 A. Yes.

14 Q. Okay. Where did you receive
15 this?

16 A. That came in with the packet,
17 the brown bag -- the black bag, I'm
18 sorry.

19 Q. Okay. In the meeting that
20 we've talked about in January of '05, the
21 one where Mr. Trott was the presenter,
22 did Mr. Trott at any point in time
23 present you -- explain to you that he was

Page 369

1 with Federal Express?

2 A. Yes.

3 Q. What position did he say he
4 held with Federal Express?

5 A. He was a ground manager.

6 Q. Manager?

7 A. Yes.

8 Q. Okay. And did he wear any
9 clothing that had Federal Express logo on
10 it?

11 MR. SPOTSWOOD: I object to
12 the form. I think, and let me explain to
13 you what I'm concerned about, you're
14 using the terminology Federal Express.
15 FedEx Ground Package Systems, Inc. is a
16 separate entity, and I don't think
17 there's any question that what we're
18 talking about is FedEx Ground Package
19 Systems, Inc. of which FedEx Home
20 Delivery is a part.

21 MR. NELMS: That's an
22 outstanding point. I apologize.

23 Q. Let me get this right then.

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1 In the meeting with Stan Trott
2 in January of 2005, did Mr. Trott wear
3 any attire that included the FedEx logo?

4 A. He had a jacket on, a FedEx
5 Ground jacket on.

6 Q. Okay. You already said he
7 represented to you that he was the
8 manager?

9 A. Yeah.

10 Q. All right. Did he tell you
11 where he was the manager?

12 A. The Montgomery terminal.

13 Q. Okay. Did he tell you how
14 long he had been working for FedEx?

15 A. Yes, he did. I don't recall
16 the years, but it was many.

17 Q. Okay. And did he give you or
18 did you have the opportunity to receive
19 any literature at that meeting?

20 A. No, sir.

21 Q. Okay. Did you sign any
22 contracts at that meeting?

23 A. No, sir.

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1 Q. And I believe you've already
2 testified that there was no form for you
3 to fill out as an attendee of the
4 meeting, is that correct?

5 A. That's correct.

6 Q. Okay. When you left that
7 meeting or the seminar or however we want
8 to characterize it that day in January of
9 2005, were you left with the impression
10 that you could become a contractor with
11 FedEx?

12 MR. SPOTSWOOD: Object to the
13 form, leading, suggestive.

14 Q. Answer, please.

15 A. Yes.

16 Q. Okay. How did you come to
17 that belief?

18 A. By the questions that my wife
19 and I asked him during the meeting and a
20 one-on-one outside the meeting.

21 Q. Okay. When you say him, you
22 mean Stan Trott?

23 A. Yes, Stan Trott.

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1 Q. Okay. And what, if anything,
2 did he tell you that led you to come to
3 these conclusions; specifically what did
4 he tell you?

5 A. He specifically told me that
6 there were -- there was actual criteria
7 that would have to be met, that they had
8 two, possibly three openings, and if the
9 criteria were met, they were -- they were
10 going to fill the on the grounds and I
11 needed to come -- if I was interested,
12 truly interested, come to the terminal.

13 Q. And did Mr. Trott explain to
14 you what these criteria were?

15 A. He went -- as far as the
16 meeting, he went into the driver training
17 and the securing the loan on the truck.

18 Q. Okay. And I believe you've
19 already testified for us in your
20 deposition that you came to a conclusion
21 that you wanted to become a contractor
22 with FedEx, is that correct?

23 MR. SPOTSWOOD: Object to the

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Page 375

1 form, leading, suggestive.
2 A. Yes.
3 Q. Okay. Did there come a point
4 in time when you believed that you wanted
5 to be a contractor with FedEx?
6 MR. SPOTSWOOD: Object to the
7 form, leading and suggestive.
8 Q. Answer.
9 A. Yes.
10 Q. All right. How did you
11 express that interest to FedEx?
12 MR. SPOTSWOOD: Same
13 objection, based on the prior question.
14 A. Well, I told Mr. Trott that
15 night that the wife and I would talk
16 about it, and I was definitely
17 interested, and I would call him and set
18 up a time to come to the terminal, and I
19 proceeded with that and went to the
20 terminal and moved forward.
21 Q. Okay. Did he provide you with
22 any paperwork to be signed?
23 A. At what time?

1 Q. Did you meet with Stan Trott
2 the day you went to the terminal?
3 A. Yes, sir.
4 Q. All right. Was he wearing any
5 clothing that had a FedEx logo on it?
6 A. FedEx jacket.
7 Q. Did his shirt have any FedEx
8 logos on it?
9 A. I don't recall.
10 Q. Okay. And you did sign some
11 paperwork?
12 A. Yeah.
13 Q. What did you sign?
14 A. I do not recall.
15 Q. Okay. Do you recall whether
16 or not any of that paperwork had the name
17 FedEx on it or had the FedEx logo on it,
18 either one?
19 A. I'm pretty sure it did.
20 Q. Okay. And what did you do
21 after you signed this paperwork?
22 A. I met back with him and left.
23 Q. Now, are you saying you had a

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1 Q. When you met him at the
2 terminal?
3 A. I proceeded to do the
4 paperwork -- the day I went to the
5 terminal, I had Trice put me online to do
6 the paperwork online.
7 Q. Okay.
8 MR. SPOTSWOOD: Is that
9 Teresa?
10 A. Bob, I don't know how --
11 MR. GASTINEAU: It's Trice.
12 A. Trice.
13 MR. SPOTSWOOD: Okay.
14 Q. (BY MR. NELMS:) So, Stan
15 Trott instructed you to come to the
16 terminal?
17 A. If I was interested.
18 Q. And you did?
19 A. Yes.
20 Q. All right. Do you remember
21 the date that you went to the terminal
22 and met with Stan Trott?
23 A. No, sir, I don't.

1 meeting that day with Stan Trott or you
2 had another meeting with Stan Trott on a
3 subsequent day?
4 A. It was not a meeting. I had
5 completed the paperwork and told him I
6 was completed -- it was complete, and
7 after that, it was like when everything
8 was processed, I would go for a drug
9 screen, do a drug screen.
10 Q. These are things that Stan
11 Trott told you you would need to do?
12 A. Yes.
13 Q. Okay. And in response to the
14 things that you were told that day by Mr.
15 Trott, what actions did you take next in
16 any way related to FedEx?
17 MR. SPOTSWOOD: Object to the
18 form of the question. That is an
19 incredibly broad question. It basically
20 asks him to tell you everything we've
21 been talking about for the last day and a
22 half.
23 MR. NELMS: Actually I think

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1 the question asked him what happened
2 next. It's serial in chronological
3 order, what did you do next related --
4 related to FedEx. What singular thing
5 did you do?
6 A. Drug screen.
7 Q. (BY MR. NELMS:) All right.
8 What prompted you to have a drug screen?
9 A. That was company policy for --
10 it was company policy you had to have a
11 drug screen.
12 Q. It was FedEx's policy that you
13 have a drug screen?
14 A. Yes.
15 Q. Okay. Where did you go to get
16 your drug screen?
17 A. I don't recall.
18 Q. Okay. How did you know to get
19 there?
20 A. Well, they gave me the
21 information.
22 Q. Who did?
23 A. One of the young ladies in the

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1 office.
2 Q. Did she work --
3 A. I can't recall if it was Trice
4 or another one.
5 Q. Okay. To the best of your
6 knowledge, did that person work for
7 Federal Express?
8 A. Yes.
9 Q. FedEx, excuse me. So then you
10 went and got your drug screen, right?
11 A. Yes.
12 Q. All right. What singular
13 event or action did you take next in
14 chronological order that is related to
15 FedEx?
16 A. The best of my knowledge, it
17 would have been securing a date for
18 training in Birmingham.
19 Q. All right. And how did you
20 know to do that?
21 A. Through Stan's office.
22 Q. Is it safe to say someone at
23 FedEx told you to secure a date for

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1 training?
2 MR. SPOTSWOOD: Object,
3 leading and suggestive.
4 A. They actually told me the date
5 at FedEx.
6 Q. Who is they?
7 A. One of the young ladies in the
8 office.
9 Q. What office?
10 A. FedEx. FedEx Ground office.
11 Q. To the best of your knowledge,
12 is that person an employee of FedEx?
13 A. Yes.
14 Q. Did you go to the training?
15 A. Yes.
16 Q. How did you know where it was?
17 A. I was given directions.
18 Q. By whom?
19 A. The ladies in the office,
20 employees -- FedEx Ground employees.
21 Q. Okay. And where was the
22 training?
23 A. Birmingham.

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1 Q. Okay. And did there come a
2 point in time when you arrived in
3 Birmingham for the training?
4 A. Yes.
5 Q. Okay. Was it in a building?
6 A. Yes.
7 Q. Okay. Were there any signs or
8 logos on this building?
9 A. It was the Drury Inn. It was
10 a hotel.
11 Q. Okay. And did you meet in a
12 conference room?
13 A. Yes.
14 Q. Okay. Were you given anything
15 when you got there?
16 A. Yes, a manual to follow along.
17 Q. Okay. Is that manual here
18 today in the exhibits that we've
19 presented?
20 A. No, it's not.
21 Q. Okay. Do you know where it is
22 now?
23 A. Yes, I do.

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1 Q. Where is it?
2 A. It's at my home.
3 Q. It is?
4 A. Yes.
5 Q. All right. Why haven't we
6 gotten it?
7 MR. SPOTSWOOD: That's a good
8 question.
9 A. I apologize, but it's at home.
10 Q. Okay.
11 A. It's just --
12 MR. NELMS: Not only do we
13 need it, but we need to get a copy to
14 Bob, okay?
15 A. Sure.
16 MR. NELMS: All right.
17 MR. SPOTSWOOD: Actually I'm
18 very disturbed by this revelation. I
19 mean, I've concluded an examination here
20 for two days without having in front of
21 me what I think could be a pretty
22 important piece of paper, and, frankly, I
23 would suggest that he get in the car and

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1 go get it and bring it back here.
2 MR. NELMS: We'll adjourn for
3 an hour. Go get it.
4 A. That's fine. It's nothing
5 more than a manual.
6 MR. NELMS: And if you have
7 any other documents, please, please,
8 please, if you can think of them, think
9 of them while you are driving to
10 Millbrook and think of them while you're
11 there.
12 A. Sure.
13 MR. SPOTSWOOD: I'm sorry,
14 Andy. I -- off the record here.
15 (Off-the-record discussion.)
16 (Said deposition was in recess
17 at 2:16 p.m. until 3:14 p.m.,
18 after which the following
19 occurred:)
20 (Whereupon, Defendant's
21 Exhibit ZZ was marked for
22 identification.)
23

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1 REEXAMINATION BY MR. SPOTSWOOD:
2 A. Apologize for that. It was in
3 a bookcase at the house.
4 Q. Let me -- before we go on
5 here, Exhibit ZZ, tell me what this is.
6 A. That's the manual that we
7 used, training manual in Birmingham with
8 Omar Newman.
9 Q. And it's -- on the first page
10 it says Quality P & D Learning
11 Participant Manual, June 2003, correct?
12 A. Correct.
13 Q. And this is the manual that
14 you were given when you got to
15 Birmingham?
16 A. That's correct.
17 Q. And who gave it to you?
18 A. Omar Newman.
19 Q. And is it the manual that was
20 used during the course of your -- I'm not
21 sure how many days this went on, but I
22 can see that there are at least --
23 A. I think it was like 16 to

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1 17 days -- no. I'm sorry. Nine, eight
2 to nine days.
3 Q. Were days one through nine
4 classroom -- I'm sorry, one through eight
5 classroom training, and then I'm looking
6 at the -- I'm looking at -- I'll tell you
7 I'm looking at the table of contents here
8 and it says day nine, ride with certified
9 contractor and then driver safety program
10 and then days ten through 14 -- I'm not
11 sure what this means. It says 14 day
12 quality P & D learning curriculum.
13 MR. GASTINEAU: That means
14 that you ride with the service manager,
15 and they deliver packages. Sometimes the
16 service manager would be driving and
17 delivering, and sometimes the trainee.
18 Q. So, is that what happened to
19 you, what was described by Kent?
20 A. I assume so. I -- when I was
21 in Birmingham, Omar -- it was classroom
22 training also. It was split up in
23 driving because we had four individuals.

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1 So, morningtime classroom; afternoon time
2 would be in the van driving.

3 Q. Do you remember who was with
4 you in the training program by name?

5 A. No, sir, I don't remember
6 their names.

7 Q. Do you remember where they
8 were from?

9 A. Well, two of the guys worked
10 out of the Birmingham term -- terminal,
11 and the young lady was out of Montgomery.

12 MR. SPOTSWOOD: Okay. All
13 right.

15 EXAMINATION BY MR. NELMS - CONTINUING:

16 Q. I believe when we left off you
17 were just describing your training in
18 Birmingham, and you just answered for Bob
19 some of my questions. After your
20 training in Birmingham -- excuse me. How
21 many days was that training in
22 Birmingham?

23 A. Eight to nine days.

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1 Q. Okay. Did you have to pay
2 Federal Express -- excuse me, FedEx, any
3 money to take that class or take that
4 training?

5 A. No.

6 Q. What regarding FedEx did you
7 do when you completed your training with
8 FedEx?

9 A. The completion of this
10 training (indicating)?

11 Q. The training that we described
12 that you took in Birmingham.

13 A. After our training was
14 complete, we was told by Joe McConnell to
15 report on the following week to the
16 terminal in Montgomery.

17 Q. Did you know Joe McConnell to
18 be an employee of FedEx?

19 A. Yes.

20 Q. Okay. And did you report to
21 the Montgomery terminal?

22 A. Yes.

23 Q. Okay. Who did you report to

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1 when you arrived at the terminal?

2 A. I report -- I reported to -- I
3 believe it was to Stan, and that was when
4 he introduced me to Kent.

5 Q. All right. And did you
6 understand Kent to be an employee of
7 FedEx?

8 A. Yes.

9 Q. Did you have any knowledge to
10 what his job position was?

11 A. I had been told he would be
12 the Home Delivery manager.

13 Q. At any time were you required
14 to take a physical examination?

15 A. Yes.

16 Q. Who paid for the physical
17 examination?

18 A. FedEx.

19 Q. Okay. Where was the physical
20 examination taken?

21 A. In Montgomery.

22 Q. Was it done by a doctor?

23 A. Yes.

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1 Q. Do you remember his or her
2 name?

3 A. No, it was a gentleman that
4 done the physical, DOT physical.

5 Q. All right. Do you remember
6 where the physical was?

7 A. Family Care Center. I think
8 it was Family Care. Family something off
9 of Vaughn Road. Vaughn and Bell.

10 Q. Okay. What, if anything, did
11 you do once you reported to the FedEx
12 terminal in Montgomery, as instructed?

13 A. Well, I was assigned to a
14 gentleman by the name of Ron, and I
15 learned that by reading transcripts to
16 ride with him for a day.

17 Q. Who instructed you to do that?

18 A. It was Joe. Now, back up.
19 The day I reported to the terminal in
20 Montgomery, it was not Stan. It was Joe.
21 I mean, this has been a long time. It
22 was Joe that I reported to, and he
23 introduced me to Kent.

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1 Q. All right. We've seen an
2 exhibit that was admitted in your
3 deposition during the course of your
4 deposition testimony today that was an
5 identification badge. Do you recall
6 that?
7 A. Yes.
8 Q. Okay. How was it you came to
9 have an identification badge?
10 A. It was assigned to me from the
11 term -- terminal, in Montgomery.
12 Q. By FedEx?
13 A. By FedEx.
14 Q. You've made mention of the
15 fact that you have some articles of
16 clothing --
17 A. Yes.
18 Q. -- that you called uniforms
19 that you were to wear as a -- do you have
20 these uniforms today?
21 A. Yes, I do.
22 Q. Okay. Do they have FedEx
23 logos on them?

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1 A. They have FedEx Home Delivery
2 on them.
3 Q. Okay. Who, if you know, paid
4 for those uniforms?
5 A. FedEx.
6 Q. Okay. How did you come to
7 have those uniforms?
8 A. They -- they were ordered from
9 the terminal.
10 Q. Who ordered them?
11 A. I believe it was Kent.
12 Q. Okay. Do you recall Exhibit
13 H --
14 A. Yes.
15 Q. -- that Mr. Spotswood showed
16 you?
17 A. Yeah.
18 Q. Okay. And are those documents
19 that came from Stearns Bank regarding the
20 financing of your FedEx truck?
21 A. Correct.
22 Q. Okay. I ask you to turn to
23 page two. Can you identify this

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1 document, page two of the composite
2 Exhibit H?
3 A. Yes.
4 Q. Okay. Does it identify who
5 the seller of the truck is?
6 A. Yeah. Yes, it does.
7 Q. Can you tell me for the record
8 who the seller of the truck is?
9 A. It says FedEx Home H --
10 Q. All right.
11 A. -- slash Montgomery, Alabama.
12 Q. Okay.
13 MR. SPOTSWOOD: I object to --
14 I think the record should be clear. It
15 does say FedEx H slash Montgomery,
16 Alabama.
17 (Off-the-record discussion.)
18 Q. (BY MR. NELMS:) I'm going to
19 show you what's already been marked as
20 Defendant's Exhibit QQ.
21 A. Yes.
22 Q. And I believe you told us that
23 is a -- basically a diary that you've

Page 392

1 written regarding the events that
2 occurred related to FedEx, is that
3 correct?
4 MR. SPOTSWOOD: Object to
5 leading.
6 A. That's correct.
7 Q. Tell me what QQ is, please,
8 for the record.
9 A. It's a time line or diary of
10 events.
11 Q. And, again, if you could tell
12 us was this diary written in one day, or
13 did you write it over a period of time?
14 A. It was written over probably a
15 two-day period.
16 Q. Okay. Is it contemporaneous,
17 that is to say, did you write the events
18 down as they occurred?
19 A. I done my best to do that,
20 yes, I did.
21 MR. SPOTSWOOD: I -- I'm not
22 sure he understood your question.
23 Q. I'm going to clarify that.

35 (Pages 389 to 392)

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1 A. Okay.
2 Q. What I'm asking is, as an
3 event would occur, would you write that
4 event down in this diary marked as QQ,
5 the very same day that the event
6 occurred?
7 A. Oh, no.
8 Q. Okay.
9 A. No.
10 Q. And you wrote the diary over
11 maybe a two-day period of time, right?
12 A. Yes, two- to three-day period,
13 I would say.
14 Q. Okay. So, you used your
15 memory --
16 A. Yes.
17 Q. -- of the -- let me finish the
18 question. So, you used your memory of
19 the events, and you wrote those events as
20 you remembered them down in this diary
21 marked as QQ?
22 A. Right.
23 MR. SPOTSWOOD: Object to

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1 leading. You've got to give me a chance
2 to get in there, so just take your time.
3 MR. NELMS: Yeah.
4 Q. (BY MR. NELMS:) The events
5 that give rise to the lawsuit that brings
6 us here today, Charlie, is your
7 recollection of those events greater
8 today than it was when you wrote the
9 diary marked as QQ?
10 MR. SPOTSWOOD: Object to
11 leading, suggestive, vague.
12 A. No.
13 Q. Okay. And I ask you to look
14 at what's been marked as Exhibit N.
15 A. Yes.
16 Q. Okay. And I believe you've
17 already testified that that's a
18 transcript of a tape recording that you
19 made of the events related to FedEx, is
20 that correct?
21 A. That's correct.
22 Q. Okay. And today is March the
23 16th, 2006, is that correct?

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1 A. Correct.
2 Q. Okay. And if you will, please
3 tell us again when did you record this
4 audiotape that the transcript is made
5 from?
6 A. It would have been the latter
7 part of May of 2005 or the first of June.
8 Q. From your experience related
9 to your personal memory of any event,
10 does your memory get weaker over a period
11 of time?
12 MR. SPOTSWOOD: Object to
13 leading, vague. I'd also note for the
14 record that on page 53 of Exhibit N he
15 says it's the 19th. He's already
16 testified it was done the 19th of May.
17 Q. He's going to do this the
18 whole time, just let him speak, and when
19 he finishes, answer my question.
20 A. Would you ask me the question
21 again, please, sir?
22 Q. Does your memory fade over a
23 period of time?

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1 MR. SPOTSWOOD: Object to
2 leading.
3 A. Some things; some things no.
4 Q. Okay. Would you say that your
5 recollection of the events that bring us
6 here today and the transcript that you
7 made that's marked here as N is greater
8 today or less today in detail than it was
9 when you made this transcript?
10 MR. SPOTSWOOD: I object to
11 the form.
12 A. As far as recall, some things
13 are very fresh. There are some things
14 that, after looking at this, it brings it
15 back to my memory.
16 Q. Okay. That's not my question.
17 A. Okay.
18 Q. Is your memory of the events
19 greater today, or was it greater on the
20 day that you made the tape?
21 A. It was greater on the day that
22 I made the --
23 MR. SPOTSWOOD: I'm sorry,

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1 because of the quick answer, I meant to
2 object to the form of that.

3 MR. NELMS: Too late.

4 MR. SPOTSWOOD: Too late.

5 MR. NELMS: All right.

6 MR. SPOTSWOOD: Please note
7 for the record that Mr. Nelms just yelled
8 at me and is being abusive to the
9 opponent.

10 MR. NELMS: And I'm
11 threatening to throw things at him, too.

12 (Off-the-record discussion.)

13 Q. (BY MR. NELMS:) I ask you to,
14 again, look at what's been marked as
15 Defendant's Deposition Exhibit WW, and --

16 A. Yes.

17 Q. -- ask you if you recognize
18 that document?

19 A. Yes.

20 Q. Okay. And what is it?

21 A. It's from Stearns Bank
22 Equipment Finance Division.

23 Q. I ask you to turn to page two

1 A. 1000 FedEx Drive, Moon
2 Township, Pennsylvania.

3 Q. Okay. I note that at the top
4 of page nine of this Exhibit WW that
5 there is some -- some lettering that
6 looks to me like it came from a fax
7 machine. Do you see that?

8 A. Yes.

9 Q. Okay. Does it indicate from
10 whom this document was faxed?

11 A. Yes, it does.

12 Q. Okay. And is there a
13 telephone number there, what looks like a
14 telephone number there?

15 A. Yes.

16 Q. Okay. And is the area code
17 412?

18 A. Correct.

19 Q. All right. Do you have any
20 knowledge of what area code -- what area
21 412 belongs to?

22 A. No.

23 Q. I ask you to look at page ten

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1 of the exhibit, and does it indicate --
2 does it -- first of all, what is page
3 two?

4 A. Conditional sales contract.

5 Q. Okay. Does it indicate who
6 the seller of the ve -- of the truck is?

7 A. Yes.

8 Q. Who?

9 A. FedEx H slash Montgomery,
10 Alabama.

11 Q. Okay. I'll ask you to look at
12 what is page nine of this composite
13 exhibit and describe for us what this is.

14 A. It's a bill of sale.

15 Q. Does it indicate who the
16 seller is?

17 A. Yes, it does.

18 Q. Who does it say is the seller?

19 A. FedEx Ground.

20 Q. Okay. Does it give an
21 address?

22 A. Yes.

23 Q. What is the address?

1 of the Exhibit WW, please, and tell me
2 what that is.

3 A. It's a certificate of origin
4 for a vehicle.

5 Q. Okay. And I ask you to turn
6 the page to 11, please. And describe for
7 us what this is, if you can.

8 A. It is the origin of the
9 vehicle.

10 Q. The back side of the --

11 A. Well, the back side, I guess.

12 Q. Okay. Does it indicate who
13 the seller is on this title?

14 A. Yes.

15 Q. Tell us, please.

16 A. FedEx Ground Package Systems,
17 Incorporated.

18 Q. Does it give an address?

19 A. Yeah.

20 Q. Can you tell us what the
21 address is?

22 A. 1000 FedEx Drive, Moon
23 Township, PA.

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1 MR. NELMS: That's it. If
2 you've got anything else, go ahead.
3 MR. SPOTSWOOD: I do not,
4 subject to what we discussed previously
5 regarding any additional documents that
6 come in from Stearns regarding the sale
7 of the vehicle.
8
9 REEXAMINATION BY MR. SPOTSWOOD:
10 Q. I do want to ask just one last
11 question, and that is, do you have any
12 other documents that in any way relate to
13 the matters that we've been talking about
14 for the last day and a half?
15 MR. NELMS: Objection, vague.
16 A. No, sir, I have no documents.
17 All I have is -- all I have is the
18 uniforms.
19 Q. All right. And you reviewed,
20 I assume, the request for production of
21 documents in the case?
22 MR. NELMS: Objection,
23 leading.

1 bookshelf that's responsive to that?
2 A. I have nothing. I have
3 absolutely nothing other than uniforms.
4 MR. SPOTSWOOD: I would say
5 that I think that it's fairly within the
6 issues embraced here with respect to
7 damages and the request for any documents
8 that we see the lease/purchase documents
9 that we talked about in connection with
10 the Chilton County house since he's
11 claiming damages in connection with that.
12
13 REEXAMINATION BY MR. NELMS:
14 Q. Have you got any documents
15 relating to the lease of the house up in
16 Chilton County?
17 A. Yeah. They were drawn up.
18 Q. Did you use a lawyer for that?
19 A. Yes, I did. McAnnally in
20 Millbrook.
21 Q. Gary?
22 A. Gary.
23 Q. Do you have like a closing

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1 MR. SPOTSWOOD: I'm allowed to
2 lead. You're not.
3 MR. NELMS: Actually what are
4 you calling him, a hostile witness?
5 MR. SPOTSWOOD: I think I am
6 certainly allowed to lead the plaintiff,
7 and, yes, as to me, he's quite hostile.
8 MR. NELMS: Okay.
9 Q. As a matter of law. I don't
10 mean to suggest you've been hostile, sir.
11 You're just on the other side of the V in
12 a piece of litigation.
13 A. What was the question again,
14 Bob? I'm sorry.
15 Q. Well, let me just be specific
16 with you. We have a request for
17 production of documents that I previously
18 showed you.
19 A. Yes. Oh, yes.
20 Q. And it's Exhibit J. And it
21 has a number of requests for information,
22 and I just want to be certain that you
23 don't have anything else at home or on a

1 package or something?
2 A. Yeah. In his envelope, the
3 whole nine yards.
4 Q. Okay. Do you have any strong
5 objection to him seeing that? I mean,
6 you've told him all the terms already.
7 A. No, I have no problem with
8 that. It's just --
9 MR. SPOTSWOOD: I'd just like
10 you to get those documents together and
11 send them along, and then whenever the
12 Stearn documents come in, send those
13 along.
14 A. May I ask a question?
15 MR. SPOTSWOOD: Yes, sir.
16 A. What -- what is the purpose of
17 that? I mean --
18 MR. NELMS: Well, he said just
19 a while ago, part of your claim is you
20 had to sell your house because you
21 couldn't afford to make the payments.
22 A. Right. Well, I was talking
23 about the full value of the house. I'm

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1 just -- yeah, like I said, the house was
2 appraised for 80 something thousand, and,
3 you know, I'm -- I'm -- I ain't gained
4 anything, but I have no problem with the
5 paperwork. I'll be --

6
7 REEXAMINATION BY MR. SPOTSWOOD:

8 Q. Right. And as I understood
9 your testimony, basically what you're
10 saying is that you think that you took
11 out a mortgage of roughly \$60,000, so you
12 got \$60,000 in your pocket on the house?

13 A. Right.

14 Q. And because of the financial
15 situation, you couldn't keep the payments
16 up, so you may wind up in basically, if I
17 understand what you testified to, you
18 might wind up selling the house to these
19 people because of the circumstances you
20 were in for \$20,000 less than you
21 consider the value of the house to be
22 because of the appraisal?

23 A. Correct.

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1 MR. NELMS: And you said that
2 the people that bought it were cousins?

3 A. Yes, she is a cousin. She is
4 a -- they are the only ones I had make me
5 an offer on the house.

6 Q. Did you put an ad in the
7 newspaper for the house?

8 A. I did not put an ad in the
9 newspaper.

10 Q. Did you --

11 MR. NELMS: Did you have a
12 realtor?

13 A. No. I do not have a realtor.

14 Q. In view of that, how do you
15 know you couldn't sell your house for
16 \$80,000 to somebody?

17 MR. NELMS: Is that question
18 on the record?

19 MR. SPOTSWOOD: Yes.

20 MR. NELMS: Object. Go ahead.

21 A. I had it on the market for a
22 while.

23 Q. During what period?

1 A. That was before my son --
2 well, my son actually was living in it,
3 and it was before he moved out, and I
4 had -- I -- the location -- it's in the
5 country. I had no inquirers on the house
6 whatsoever.

7 Q. Do you remember what year you
8 would have advertised it? Would that
9 have been '04? You told me your dad died
10 in '03.

11 A. Yeah. I do not recall if it
12 was '04 or '05.

13 MR. NELMS: Are you done?

14 Q. (BY MR. SPOTSWOOD:) Well, I
15 think -- I didn't hear the name of this
16 borrower or purchaser. I just want to
17 make -- remember we were asking about
18 relatives in the Middle District of
19 Alabama. Is Chilton County in the Middle
20 District?

21 MR. NELMS: I think so.

22 Q. Are there any other relatives
23 that you haven't mentioned to me that

1 reside in the Middle District, those
2 counties that we talked about earlier
3 heading all the way down?

4 A. Just in Chilton County.

5 Q. Okay. Do you have some other
6 relatives in Chilton County?

7 A. I have some cousins there.

8 Q. Can you tell us who they are?

9 A. I know there's --

10 MR. NELMS: Keep going.

11 A. Lona Mitchell.

12 Q. How old is Lona?

13 A. She's in her forties. I would
14 assume. I don't really know. I'm
15 assuming she's in her forties.

16 Q. All right. Anyone else?

17 A. And I have some cousins on my
18 mother's side that I have not seen for
19 years. I have no contact with them.

20 Q. Okay. Names, last names?

21 A. Their last name is Brasher,
22 and, like I say, it's been years.

23 MR. NELMS: It is in the

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1 Middle.

2 Q. All right. Anyone else you
3 can think of?

4 A. That's it.

5 MR. SPOTSWOOD: All right,
6 sir. Thank you very much.

7
8 REEXAMINATION BY MR. NELMS:

9 Q. Why did you not advertise that
10 home for sale?

11 A. Because when my son moved out,
12 I was already -- I already had to pick up
13 the payments on the house, and it was a
14 struggle then, and Lona and Keith came
15 along -- they knew my situation. They
16 knew my situation, and they said we'll --
17 they made me an offer. They said, hey,
18 what -- you know, we'll -- didn't make me
19 an offer. What they said we'll -- if you
20 want to get rid of the house, we will do
21 this, if you can do this.

22 Q. And you've already testified
23 the --

1 but if there is additional testimony
2 that's required based upon the Stearns
3 documents that have not come in that, you
4 know, we both reserve the right to deal
5 with those issues.

6 MR. NELMS: That's our
7 agreement.

8 MR. SPOTSWOOD: Okay.

9 MR. NELMS: We're concluded.

10 MR. SPOTSWOOD: Yes, sir.
11 (Said deposition was in recess
12 at 3:44 p.m. until 3:54 p.m.,
13 after which the following
14 occurred:)

15 (Whereupon, Defendant's
16 Exhibit AAA was marked for
17 identification.)

18 MR. NELMS: Present it to him
19 and let him identify it, and that will be
20 it.

21 Q. (BY MR. SPOTSWOOD:) Mr.
22 Thornton, Exhibit AAA, is that a copy of
23 the bill of sale that you signed which

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1 A. And I just --

2 Q. You've already testified what
3 they did was they took over the payments?

4 A. Yes, they took over the
5 payments. I knew that I could not --
6 needed to get rid of the home as soon as
7 possible. I could not let it go two or
8 three months down the road sitting on the
9 market making payments on that home.

10 Q. Why didn't you contract with a
11 realtor for the sale of the home?

12 A. Because it would take a period
13 of time. It would not sell Johnny on the
14 spot. It didn't before when Charlie was
15 in it, and I felt like it would not sell
16 because of the location.

17 MR. NELMS: Thank you. On the
18 record, do you want to state that we've
19 agreed to hold open?

20 MR. SPOTSWOOD: Well, I think
21 we've agreed that, you know, we can go
22 ahead and use the deposition as we see
23 fit in view of the upcoming deadlines,

1 sets forth the -- and reflects the
2 transfer of ownership of your van to the
3 buyer known, listed here as Daniel Wayne
4 Goode, G-O-O-D-E?

5 A. Yes, sir.

6 Q. And you signed that document?

7 A. Yes, sir.

8 Q. And it's dated May the 25th of
9 2005, is that correct?

10 A. That's correct.

11 Q. And that's the date that you
12 signed it?

13 A. Yes, sir.

14 Q. And the purchase price as
15 reflected on this bill of sale is
16 \$35,763.30, correct?

17 A. Correct.

18 Q. And that is, in fact, what you
19 transferred the ownership interest for
20 was that amount of money?

21 A. Correct.

22 MR. SPOTSWOOD: Thank you.
23

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1 FURTHER THE DEPONENT SAITH NOT

2
3 (Said deposition was concluded
4 at 3:55 p.m. on the 16th day
5 of March, 2006.)
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1 C E R T I F I C A T E

2
3
4 STATE OF ALABAMA)
5 JEFFERSON COUNTY)
6

7 I hereby certify that the
8 above and foregoing deposition was taken
9 down by me in stenotypy, and the
10 questions and answers thereto were
11 reduced to typewriting under my
12 supervision, and that the foregoing
13 represents a true and correct transcript
14 of the deposition given by said witness
15 upon said hearing.

16 I further certify that I am
17 neither of counsel nor of kin to the
18 parties to the action, nor am I in
19 anywise interested in the result of said
20 cause.
21
22

23 COMMISSIONER - NOTARY PUBLIC